Summary of News of Professional Interest on Voice of Chartered Accountants for the month of January to March				
DATE	S.NO.	TOPIC	RELEVANT SEC. (IF ANY)	JUDGMENT PASSED BY
04-Jan-12	195	**CIT Vs. WIMCO SEEDLINGS LTD., ITA No. 1367, 1368 & 1391/2008 DATE OF DECISION : 12 DECEMBER 2011,** Whether common expenses incurred by an assessee can be allocated towards taxable and non-taxable income under the provisions of Section 14A of the Income Tax Act, 1961. It was held that unless and until there was actual expenditure for earning the exempted income, there could not be any disallowance under section 14A. While we agree that the expression 'expenditure incurred' refers to actual expenditure and not to some imagined expenditure, we would like to make it clear that the 'actual' expenditure that is in contemplation under section 14A(1) of the said Act is the 'actual' expenditure in relation to or in connection with or pertaining to exempt income. The corollary to this is that if no expenditure is incurred in relation to the exempt income, no disallowance can be made under section 14A of the said Act.	14A	HIGH COURT OF DELHI
	196	**CIT Vs. MONTO MOTORS LTD., ITA NO. 978/2011, DATE OF DECISION : 12 DECEMBER 2011,** Advertisements and sales promotion are conducted to increase sale and their impact is limited and felt for a short duration. No permanent character or advantage is achieved and is palpable, unless special or specific factors are brought on record. Expenses for advertising consumer products generally are a part of the process of profit earning and not in the nature of capital outlay. The expenses in the present case were not incurred once and for all, but were periodical expenses which had to be incurred continuously in view of the nature of the business. It was an on-going expense.	37	HIGH COURT OF DELHI
06-Jan-12	197	**SURAJ LAMP & INDUSTRIES (P) Ltd. Vs. STATE OF HARYANA, SLP NO. 13917 OF 2009, DATE OF DECISION : 11 OCTOBER 2011** It was held that, transfer of Immovable property through General Power of Attorney Sales (GPA sales), Sale agreement (SA), Will transfer can't be recognized as valid mode of transfer. Because it does not convey any title nor create any interest in an immovable property. Immovable property can be legally and lawfully transferred/ conveyed only by a registered deed of conveyance.	2(47)	SUPREME COURT OF INDIA

	198	**CIT Vs EHPT INDIA P. LTD., ITA No. 1172/2008, DATE OF DECISION: 14 DECEMBER 2011,** The Assessee operated two units - a software Technologies Park Unit (STP) and Domestic Unit (Non –STP). Assessee computed the profits from the STP unit by apportioning the indirect or common expenses on the basis of the head-count of the employees working in the said unit and the domestic unit and claimed the deduction u/s 10A in respect of the former unit accordingly. The assessing official contention is that the common expenses should have been apportioned on the basis of the turnover in the respective units. Held that, method adopted by the assessee has been consistently accepted by the departmental authorities is not under challenge. No just cause has been made out by the department for a departure from the past assessments and there is no distortion of Profit.	**10A**	**HIGH COURT OF DELHI**
11-Jan-12	199	**U. P. State Road Transport Corporation (UPSRTC) Vs. Commissioner of Central Excise & Service Tax Lucknow, CIVIL APPEAL NO. 465 OF 2011, Supreme Court of India, dated : 12.01.2011 (In favour of Revenue)** **Brief Fact of the Case:** (a) UPSRTC had taken buses on rent for carrying of passengers from private bus operators under individual contracts. (b) Department requested UPSRTC to supply list of all contractual assignments entered into with said private parties. (c) UPSRTC challenged said communication of department on ground that by impugned order, department had imposed service tax on buses hired by UPSRTC. (d) Department contended that no service tax had been imposed on buses owned and possessed by UPSRTC and that service tax was payable by bus owners whose buses had been given on rent to UPSRTC. **Held:** In that view of the matter, we find no reason to interfere with the order passed by the High	**Section 65**	**SUPREME COURT OF INDIA**

	200	**Union of India Vs. Indian National Shipowners Association, CIVIL APPEAL NO. 10227 OF 2010, Supreme Court of India, Judgement dated : 01.12.2010 (In favour of assesse) Substantial Question of Law:** Whether the services provided by the respondent/assesse as given in para 4 of the judgement were provided in relation to mining of mineral, oil or gas [Section 65(105)(zzzy)]. **Held:** None of the aforesaid entry in the Schedule could be strictly said to be a service rendered in relation to mining of mineral, oil or gas. Therefore, we find justification in the findings arrived at by the High Court to the aforesaid extension. The nature of work which are set out in the Schedule at P. 200 of the Paper Book cannot be said to be even remotely connected and included within the ambit of the aforesaid expression as found in section 65(105) Entry No. zzzy and, therefore, we affirm the order of the High Court to the aforesaid extent by look	**65(105)(ZZZY)**	**SUPREME COURT OF INDIA**
13-Jan-12	**201**	**ITO, (TDS) Vs. INDIAN OIL CORPORATION, ITA No. 1829 to 1834/Del/2011 Date of Pronouncement : 16.11.2011, (ITAT - Delhi)** The assessee entered into contracts with transporters for transporting petroleum products from the plant to various destinations. The assessee deducted TDS u/s 194C at 2% on the basis that the transportation contract was "work". The AO held that the contract was a "hiring" of vehicles on the basis that (i) the assessee had exclusive possession and usage, (ii) the use was for a fixed tenure, (iii) the tankers were customized to the assessee requirements and that TDS ought to have been u/s 194-I at 10%. It held that the agreement was of the nature of transport agreement and not one for hiring of vehicles because the tank truck owners did not simply confine themselves to providing vehicles at the disposal of the assessee in lieu of rent but also engaged their drivers in	**194-I**	**ITAT- DELHI**

	202	**Shri Ram S Sarda Vs. DCIT, I.T.A No. 1172/RJT/2010 Date of Pronouncement : 02.11.2011,** Pursuant to a search u/s 132, cash was seized from the assessee and third parties and assessed as the assessee income. Though the assessee requested that the said seized cash be treated as payment of "advance tax", the AO ignored the same and levied interest u/s 234A, 234B & 234C on the basis that advance tax had not been paid. In ITAT, held that the cash seized during the course of search is required to be adjusted against taxes due including advance-tax for the purpose of computation of interest u/s 234A, 234B, and 234C from the date when it was seized and cash seized from third party or cash seized from the assessee would retain the same character.	234A/B/C	ITAT-RAJKOT
16-Jan-12	203	**Microsoft Corporation (India) Private Ltd. Vs. Commissioner of Service Tax & Anr (Delhi HC), WP (C) No. 11460/2009 & CM No. 11182/2009, Date of judgement October 30, 2009. (In Favour of Revenue).** **Brief Fact of the Case:** a. Microsoft Corporation (India) Private Ltd. (Petitioner/Appellant/Assesee) provides various technical support services to Microsoft Operations, Singapore (MS). Both the MS and the petitioner are the wholly owned subsidiaries of Microsoft Corporation, Washington. b. The respondent/department herein has taken the view that the commission received on these services is amenable to service tax and passed the demand order in the neighbourhood of Rs. 400 crore. c. The petitioner has filed appeal against this order before the Customs, Excise and Service Tax Appellate Tribunal. This appeal is pending consideration. Along with this appeal, the petitioner also moved an application for stay under Section 35F of the Act, which is made applicable also to service tax vide Section 83 of the Finance Act, 1994.	35F	HIGH COURT OF DELHI

	204	**Commissioner of Central Excise v. Sunwin Technosolution (P.) Ltd. (SC) CIVIL APPEAL NO. 8084 OF 2010 Judgement dated SEPTEMBER 13, 2010.(In Favour of Department) Brief Fact of the Case:** By notification dated 10-9-2004, commercial training or coaching provided by vocational and recreational institutes was exempted from payment of service tax. By issuing another notification dated 7-6-2005, notification dated 10-9-2004 was amended by incorporating a proviso that nothing contained in the said notification shall apply to the taxable services provided in relation to commercial training or coaching by a computer training institute. Said proviso was made effective from 16-6-2005. On the basis of the said amendment made, the assessee claimed that service tax would not be payable by a computer training institute, like it, for period from 10-9-2004 to 15-6-2005. The Tribunal disallowed the claim of assessee, which was affirmed by the High Court.	**Section 65 (105)(zzc)**	**SUPREME COURT OF INDIA**
19-Jan-12	205	**GIRNAR INVESTMENT LTD Vs. CIT, WP(C) NO. 5750/2010, DATE OF DECISION: 5TH JANUARY 2012, S. 220(2)**: If original demand not fully paid, interest payable even for period when demand was not in existence The AO passed an assessment order and raised a demand of Rs. 21.24 lakhs of which Rs. 10.50 lakhs was paid by the assessee and the balance of Rs. 10.94 was stayed. On 20.5.1998, the CIT (A) allowed the appeal of the assessee and no demand remained payable by the assessee. The AO refunded the taxes paid by the assessee. Subsequently, the Tribunal reversed the CIT (A). The AO gave effect to the Tribunal's order on 30.7.2004 and charged interest u/s 220(2) for the entire period. S. 220(2) provides for levy of interest if the demand is not paid within 30 days of the service of notice u/s 156. HC, held that- The assessee has not paid up the entire tax within the specified period, it is	**220(2)**	**DELHI HIGH COURT**

	206	**CIT Vs. SPL'S SIDDHARTHA LTD, ITA NO. 836 OF 2011, DECISION DELIVERED ON 14TH SEPTEMBER 2011,** **Section 147: Sanction of CIT instead of JCIT renders reopening invalid.** The AO issued a notice u/s 148 to reopen an assessment. As Section 143 (3) order had not been passed & 4 years had elapsed, the AO ought to have obtained the sanction of the Joint/Additional CIT u/s 151(2). Instead, he routed the file through the Additional CIT and obtained the sanction of the CIT. (i) Section. 151(2) require the sanction to be accorded by the Joint/Additional CIT. The AO sought the sanction of the CIT. Though the file was routed through the Addl. CIT, the latter only made an endorsement "CIT may kindly accord sanction". This showed that the Addl. CIT did not apply his mind or gave any sanction. Instead, he requested the CIT to accord approval. This is not an irregularity curable u/s 292B; (ii) The different authorities specified in s. 116 have to exercise their powers in accordance	**148**	**DELHI HIGH COURT**
20-Jan-12	**207**	**VODAFONE INTERNATIONAL HOLDINGS B.V. Vs. UNION OF INDIA & ANR. … RESPONDENT(S), CIVIL APPEAL NO. 733 OF 2012, (ARISING OUT OF S.L.P. (C) NO. 26529 OF 2010), DATE OF PRONOUNCEMENT : 20/01/2012,** **Facts of the case.** (1) In 2007, Vodafone International Holding B.V. (Vodafone), a Dutch entity acquired Shares of CGP Investments (Holding) Ltd. (CGP), a Cayman Island entity through HTIL, another Cayman Island entity belonging to the Hutch group. Through CGP, Hutch group owned 67% stake in their Indian JV operations in Hutch-Essar Limited (HEL). (2) By virtue of transfer of shares of CGP, underlying business interest of Hutch Group in India was transferred to Vodafone . The deal Value was approx. USD 11.1 billion. Payment was made by Vodafone to HTIL without deducting any taxes as the deal took place in Cayman Islands and it was interpreted that the transaction was not taxable in India. **Brief of Litigation.** The Offshore Transaction herein is a bonafide structured FDI investment into India which fell outside India's territorial tax jurisdiction, hence not taxable. The said Offshore Transaction evidences participative investment and not a sham or tax avoidant preordained tr Revenue contended that the words directly or indirectly in Section 9(1)(i) go with the income	**9(1)(i)**	**SUPREME COURT OF INDIA**

23-Jan-12	**208**	**AIRPORT AUTHORITY OF INDIA Vs. C.I.T, ITA No. 432/2008, Date of Judgment: 16.12.2011,** The assessee incurred expenditure on removal of encroachments and claimed the same as a revenue deduction on the ground that the expenditure was incurred in the normal course of the business; High Court Held upheld the assessee contention - Expenditure incurred for running the business or working it, with a view to produce profits is in the nature of revenue expenditure. While expenditure for acquisition of a source of income would ordinarily be capital expenditure, expenditure which merely enables the profit making structure to work more efficiently would be in the nature of revenue expenditure. Expenditure incurred to fine tune trading operations to enable the management to run the business effectively, efficiently and profitably leaving the fixed assets untouched would be an expenditure of a revenue nature even though the advantage obtained may last for an indefi	**37**	**HIGH COURT OF DELHI**
	209	**M/s Nandi Steels Limited Vs. The A.C.I.T, ITA No. 546/2008, Date of pronouncement: 09-12-2011,** Gains arising from "business assets" not eligible for set-off against Brought forward business loss The assessee sold land & building used for business purposes. Though the gain was offered as capital gains, Section 72 (1) allows brought forward business loss to be set-off against the "profits & gains of any business or profession" of the subsequent year. The expression "profits & gains of business" means income earned out of business carried on by the assessee and not just income connected in some way to the business or profession carried on by the assessee. The land & building were fixed & capital assets used by the assessee for its business purposes. The gains arising there from were assessable as capital gains and were not eligible for set-off against the brought forward business loss u/s 72.	**72**	**ITAT-BANGALORE**

24-Jan-12	**210**	**Business Aviation Association For India v.Union of India, SANJIV KHANNA, J. W.P. (C) NO. 3292 of 2010, Judgement Date: 12.07.2011** **Substantial Question of Law:** (1). As per Assessee/Petitioner/Appellant, aircraft operators are only taking passengers and when passengers board a chartered flight, service tax has to be levied under clause(zzzo)(Transport of passengers by air on international journey services) and clause (zzzzj)(Supply of tangible goods services) has no application. (2). However, as per Department/Respondent as per clarification vide circular no Dy. No. 20/Comm (ST)/2009 dated 9th February,2009, services provided by petitioner falls under clause (zzzzj). **Held:** Assessee/ Petitioner would submit that his activities come within the scope of transport as he only transports passengers from one place to other. Last part of the paragraphs 2 and 3 of	**Section 65(105)(ZZZZJ) & Section 65(105)(ZZZO) of service tax**	**HIGH COURT OF DELHI**
	211	**Commissioner of Central Excise Commissionerate Ludhiana Vs. Mayfair Resorts, APPEAL NO. ST/1 of 2011, Judgement date: 01.03.2011 (In Favour of Assessee),** **Brief Fact of the Case:** (1). The assesse /respondent is registered with the Service Tax Department under the category 'Mandap Keeper'. (2). During audit for the period of 2004-05, it was noticed by the Department/Appellant that the assessee surrendered Rs. 35 lakhs to the Income-tax Department. (3). According to the department, since only business of the assessee was providing service of 'Mandap Keeper', the amount represented proceeds of services provided by the assessee. (4). Accordingly, amount was subject to service tax vide order-in-original dated 28-1-2009. (5). On appeal, the said order was set aside by Tribunal. **Held:** Apart from the fact that it was for the department to show the evasion of service tax and that the money found with the assessee represented proceeds of services provided by it, the Commissioner and the Tribunal have followed an earlier order of the Tribunal. On being aske No substantial question of law having arisen, the appeal cannot be entertained.	**Section 65(105)(m)**	**HIGH COURT OF PUNJAB & HARYANA**

27-Jan-12	212	**M/s Radials International Vs. Asstt. C.I.T, I. T. Appeal No. 1368 (Del) of 2010, Date of Judgment: 16 December 2011** **Long-term & short-term gains from PMS transactions taxable as business profits** The assessee offered LTCG & STCG on sale of shares which had arisen through a Portfolio Management Scheme of Kotak and Reliance. The investments were shown under the head "investments" in the accounts and were made out of surplus funds. Delivery of the shares was taken. The ITAT held that as the transactions by the PMS Manager were frequent and the holding period was short, the LTCG & STCG were assessable as business profits. The intention of the assessee was to maximize the profit. As the purchase and sale of shares under PMS is not in the control of the assessee at all, it cannot be said that the assessee had invested money under PMS with intention to hold shares as investment. The portfolio manager carried out trading in shares on behalf of his clients to maximize the profits. Therefo	28	ITAT- DELHI
	213	**C.I.T Vs. RADHE DEVELOPERS, I.T.A No. 546 of 2008, Date of Judgment: Date: 13/12/2011,** The assessee entered into a 'development agreement' with the owner of the land pursuant to which it agreed to develop the land. Deduction u/s 80-IB(10) in respect of the profits arising from the said activity was claimed on the ground that it was "derived from the business of undertaking developing and building housing project approved by the local authority". **The High Court HELD:** Section 80IB(10) allows deduction to an undertaking engaged in the business of developing and constructing housing projects. There is no requirement that the land must be owned by the assessee seeking the deduction. Under the development agreement, the assessee had undertaken the development of housing project at its own risk and cost. The land owner had accepted the full price of the land and had no responsibility. The entire risk of investment anc	80-IB(10)	HIGH COURT OF GUJARAT

30-Jan-12	**214**	**DOSHION LTD Vs. I.T.O, SPECIAL CIVIL APPLICATION No. 18574 of 2011, Date of Judgment: 16/01/2012,** For AY 2005-06, the AO passed order u/s 143(3) in which he allowed section 80-IA deduction. Thereafter, after the expiry of 4 years, he reopened the assessment u/s 147 on the ground that in view of the retrospective amendment to the Explanation to section 80-IA by the F (No. 2) Act 2009 w.r.e.f. 1.4.2000, the assessee, being a works contractor, was not eligible for section 80-IA deduction. On a Writ Petition filed by the assessee to challenge the assessment order, HELD allowing the Petition: I. That an assessment can be reopened beyond 4 years without there being any failure to disclose truly and fully all material facts, even where law is amended with retrospective effect. II. The argument that the assessee failed to disclose the nature of works executed and that	**143(3)**	**HIGH COURT OF GUJARAT**
	215	**Chadha Sugars Pvt. Ltd. Vs. A.C.I.T, ITA No. 1773(Del)/2010, Date of pronouncement: 23.12.2011,** The argument that the assessee does not have expertise in taxation matters and so it relied on expert opinion is not acceptable because the opinion was furnished for accounting purposes. An accountant's view is not really material for deciding the deductibility or otherwise of an expenditure. Where the assessee knew about the problem at the time of filing of return, but still made the claim. Not only this, the claim was pursued even up to the level of the CIT (A) in gross disregard for the decision of the Supreme Court, which the assessee came to know at least after receiving the assessment order. Therefore, the claim was not only wrong but also false and it was persisted with for some time.	**271(1)(C.)**	**ITAT-DELHI**

02-Feb-12	216	**ALPINE ELECTRONICS ASIA PTE LTD. Vs. D.G.I.T, WRIT PETITON (CIVIL) NO. 7932/2010, Date of Decision: 24th January 2012,** The AO issued a notice u/s 148 to reopen the assessment. Though the assessee filed a ROI, the AO did not issue notice u/s 143(2) within the prescribed period but passed a draft assessment order u/s 144C. HELD by the Court quashing the assessment proceedings: (i) The service of notice u/s 143(2) within the statutory time limit is mandatory and is not an inconsequential procedural requirement. Omission to issue notice u/s 143(2) is not curable and the requirement cannot be dispensed with section 143(2) is applicable to proceedings u/s 147 & 148. While the Proviso to section148 protects and grants liberty to the Revenue to serve notice u/s 143(2) before passing of the assessment order for returns furnished on or before 1.10.2005, in respect of returns filed pursuant to notice u/s 148 after 1.10.2005, it is mandatory to serve notice u/s 143(2) within the stipulated time limit.	147	HIGH COURT OF DELHI
	217	**CIT Vs SOFTWARE CONSULTANTS, ITA No. 914/2010, Date of Order : 17.01.2012,** For exercise of power under Section 263 of the Act, it is mandatory that the order passed by the Assessing Officer should be erroneous and prejudicial to the interest of the Revenue. In the present case, the Assessing Officer did not make any addition for the reasons recorded at the time of issue of notice under Section 148 of the Act. This position is not disputed and disturbed by the Commissioner of Income Tax in his order under Section 263 of the Act. Sequitur is that the Assessing Officer could not have made an addition on account of share application money in the assessment proceedings under Section 147/148. Accordingly, the assessment order is not erroneous. Thus, the Commissioner of Income Tax could not have exercised jurisdiction under Section 263 of the Act.	263	HIGH COURT OF DELHI

04-Feb-12	**218**	**C.C.E Vs. Tata Advanced Materials Ltd., CEA NO. 83 OF 2009, JUDGEMENT DATE: 11th APRIL 2011 (In favour of assessee)** **Brief fact of the case:** A. The assesse/respondent purchased the capital goods in the year 1998 and paid the excise duty and used the same in manufacturing of excisable goods. Utilised cenvat credit in respect of same against payment of duty on removal of finished goods. B. The said capital goods were destroyed in a fire accident on 20.05.2003. C. Thereafter, the assessee purchased new capital goods and put-forth a claim before the Insurance Company for reimbursement in terms of the insurance policy taken. The Insurance Company reimbursed the amount to the assessee, which included the excise duty, which the assessee had paid on the capital goods. D. On coming to know of the same, the Excise Department called upon the assessee to reverse the cenvat credit.	**CENVAT CREDIT RULES, 2004**	**HIGH COURT OF KARNATAK A**
	219	**Karnataka Government Insurance Department (K.G.I.D.) Vs. Assistant Commissioner of Central Excise , WRIT PETITION NO. 23077 OF 2011 (CESTAT), JUDGEMENT DATE: 4th NOVEMBER 2011 (In favour of Revenue)** **Brief fact of the case:** A. The assesse/petitioner is a government organisation engaged in General Insurance Business. It collected fees for insuring vehicles owned by Government Departments and commercial concerns and vehicles in which Government had financial interest and vehicles for purpose of which Government had advanced money. B. The assesse/petitioner failed I. to make an application for registration , II. to make the payment of service tax and III. to furnish return in the prescribed form in terms of provisions of Finance Act, 1994. C. As per assesse/petitioner in terms of paragraph no. 2 of circular No. 89/7/2006-Service Tax, dated 18th December 2006, services provided by it were not taxable.	**Circular No. 89/7/2006-Service Tax**	**HIGH COURT OF KARNATAK A**

07-Feb-12	**220**	**M/s Kodiak Networks (India) Private Ltd., Vs. The ACIT, ITA No. 1413/Bang/2010, Date of Pronouncement: 27/01/2012,** TPO can rely on "contemporaneous" data even if not available at specified date In a transfer pricing appeal, the Tribunal had to consider two issues: (a) what is the data to be considered by the TPO at the time of determining ALP? & (b) whether the assessee should be given an opportunity to refute the material sought to be utilized by the TPO? HELD by the Tribunal: (i) Under Rule 10D (4) the information and documents should as far as possible be contemporaneous and should exists latest by the 'specified date' specified in section 92F (4) i.e. the due date for filing the ROI. There is no cut-off date up to which only the information available in public domain can be taken into consideration by the TPO while making the transfer pricing adjustments and arriving at the ALP. The assessee argument that section	**92F(4)**	**ITAT-Bangalore**
	221	**Kushal K Bangia, Vs. I.T.O, I.T.A No. 2349/Mum/2011, Date of pronouncement : 31.01.2012, Gains on housing society redevelopment is non-taxable capital receipt** The assessee was the member of a housing society. The housing society and it's members entered into an agreement with a developer pursuant to which the developer demolished the building owned by the housing society and reconstructed a new multistoried building by using the FSI arising out of the property and the outside TDR available under Development Control Regulations. The assessee, as a member of the housing society, received a larger flat in the new building, displacement compensation of Rs. 6 lakhs (at Rs.34,000 p.m. for the period of construction of the new building) and additional compensation of Rs.11.75 lakhs. The AO & CIT (A) held that the said "additional compensation" was assessable as income in the assessee's hands. On appeal by the assessee, HELD allowing the appeal: In principle, though the scope of "income" in section 2(24) is very wide, a capital receipt is not chargeable to tax as income unless there is a specific provision to that effect. As the resid	**2(24)**	**ITAT-MUMBAI**

	222	**CIT Vs. RAJAN NANDA, ITA 400/2008, DECISION DELIVERED ON: 16TH DECEMBER, 2011,** Every assessee has right to plan its affairs in such a manner which may result in payment of least tax possible, albeit, in conformity with the provisions of Act. It is also permissible to the assessee to take advantage of the gaping holes in the provisions of the Act. The job of the Court is to simply look at the provisions of the Act and to see whether these provisions allow the assessee to arrange their affairs to ensure lesser payment of tax. If that is permissible, no further scrutiny is required and this would not amount to tax evasion. Benefit inured owing to the combined effect of a prudent investment and statutory exemption provided under Section 10(10D) of the Act, the section does not envisage of any bifurcation in the amount received on maturity on any basis whatsoever. Nothing can be	**10(10D)**	**HIGH COURT OF DELHI**
09-Feb-12	**223**	**Commissioner of Central Excise, Govt. of India Vs. H.T. Media (HC PATNA), MISC. APPEAL NO. 620 OF 2009, DATE: APRIL 29, 2011 (In favour of Assessee)** **Brief fact of the case:** I.It is with respect to the period January 2005 to March 2005. The assesse/respondent is engaged in the business, inter alia, of production and circulation of news papers. The assessee/respondent is liable to payment of service tax on freight charges in view of the provisions of the Finance Act, 1994 and it did the same by claiming abatement of 75%. II.The Director General of Service Tax, Mumbai, issued circular dated 30-3-2005, clarifying the position that the benefit of exemption of abatement of tax to the extent of 75 per cent shall be available to the goods transport agency only. In view of this clarificatory circular, the assessee deposited a balance 75% amount. III.This was followed by another clarificatory circular No. B1/6/05-TRU, dated 27-7-2005, which in substance provided that the benefit of abatement of tax to the extent of 75 per cent s	**Section 65(105)(zzp)**	**HIGH COURT OF PATNA**

	224	**Commissioner of Central Excise, Commissionerate Vs. Ess Ess Engineers, APPEAL NO. 2 OF 2011 (O&M), JUDGEMENT DATED: MAY 13, 2011 (In favour of assessee)** **Brief fact of the case:** I. The assesse/respondent is, inter alia, engaged in providing of taxable service of "Erection, Commissioning and Installation". II. Assesse/respondent was also providing fabrication and dismantling services and according to the assesse same was not taxable as it is not covered by Erection, Commissioning and Installation services. III. During course of audit, department contended that work related with fabrication and dismantling was also taxable services and accordingly service tax and penalty were payable. IV. The allegation against the assesse/respondent is that they were not disclosing full value of the taxable service provided to their clients with the intention to evade the service tax. However, the appellant's contention is that in addition to erection, commissioning and installation, they were also undertaking the work relating to fabrication and dismantling, on w V. On the basis of above fact and provision of section 76, 78 & 80, tribunal held that penalty	**76**	**HIGH COURT OF PUNJAB & HARYANA**
11-Feb-12	225	**THE SYNODICAL BOARD OF HEALTH SERVICES Vs. D.G.I.T, W.P.(C) NO. 12897/2009, DATE OF DECISION: 09/01/2012,, SECTION : 10(23C)(IV)** The petitioner has filed application for registration to Director General of Income Tax (Exemptions) under section 10(23C)(iv) of the Income Tax Act,. The respondent dismissed the application on the ground that there was variation of administration expenses in all the three assessment years. It was held that the principle of res judicata does not apply and for each period the question of grant of exemption has to be examined separately. The competent authority in the said case had brought on record evidence to show that the records and accounts were not properly maintained and were obviously subjected to manipulation which was decipherable. The reasons given by the respondent in the impugned order do not appear to us to be germane to the conclusion he has reached. As indicated the explanation/justification of the petitioner has not been considered. Keeping in view the aforesaid aspects we set aside the im	**10(23C)(IV)**	**HIGH COURT OF DELHI**

	226	**MOHAN MEAKIN LIMITED Vs. C.I.T, ITA NO. 964/2009, DATE OF DECISION: 30/01/2012** **Issue:** "Whether ITAT was correct in law in deleting the addition made by the Assessing Officer on account of unclaimed credit balances written off by the assessee in its books of accounts for the year under consideration, invoking the provisions of Section 41(1) of the Income Tax Act." **Held:** Explanation 1 of Section 41(1) of I.T Act is applicable with effect from 1-4-1997. In the	**41(1)**	**HIGH COURT OF DELHI**
13-Feb-12	**227**	**M/S TOPMAN EXPORTS Vs. CIT, SLP (C) NO. 26558 OF 2010, DATE OF JUDGMENT: 08/02/2012,** **ISSUE:** Whether the entire amount received by an assessee on sale of the Duty Entitlement Pass Book (for short 'the DEPB') represents profit on transfer of DEPB under Section 28(iiid) of the Income Tax Act, 1961 (for short 'the Act') for the purpose of the computation of deduction in respect of profits retained for export business under Section 80HHC of the Act. **Held:** Where an assessee has an export turnover exceeding Rs.10 crores and has made profits on transfer of DEPB under clause (iiid) of Section 28, he would not get the benefit of addition to export profits under third or fourth proviso to sub-section (3) of Section 80HHC, but he would get the benefit of exclusion of a smaller figure from "profits of the business" under explanation (baa) to Section 80HHC of the Act and there is nothing in explanation (baa) to Section 80HHC to show that this benefit of exclusion of a smaller figure from "profits of the	**80HHC**	**SUPREME COURT OF INDIA**

	228	**AL-KABEER EXPORTS LIMITED Vs. C.I.T, S.L.P. (C) Nos. 33932-33933/2010, Date: 03/02/2012,** For seciton 115JA/JB s. 80HHC deduction to be computed as per P&L Profits & not normal provisions In computing "book profits" u/s 115JA & 115JB, the assessee claimed that the deduction admissible there under u/s 80HHC had to be computed on the basis of the "book profits" and not on the basis of the income computed under the normal provisions of the Act. This claim was upheld by the Tribunal On appeal by the Revenue, the High Court reversed the Tribunal. On appeal by the assessee, HELD reversing the High Court: In view of this Court's Order in the case of Commissioner of Income-Tax vs. Bhari Information Technology Systems (P) Ltd. [S.L.P. (C) No.33750 of 2009], upholding the judgment of the Special Bench of Income Tax Appellate Tribunal in the case of Deputy Commissioner of Income Tax vs. Syncome Formulations (I) Ltd., reported in (2007) 106	**115JA & 115JB**	**SUPREME COURT OF INDIA**
16-Feb-12	**229**	**MOTHER DAIRY INDIA LTD.Vs. CIT, ITA NO. 1925/2010, Date of Decision: 30/01/2012,** **Issue:** Whether tax was deducted at source on the payment of commission to agents/concessionaires, who sold milk and other products of the assessee from the booths owned by the assessee under Section 194H of the Act. **Held:** The transaction between assessee and concessionaires is principle to principle basis not agent because the property in the goods is transferred and gets vested in the concessionaire at the time of the delivery then he is thereafter liable for the same and would be dealing with them in his own right as a principal and not as an agent of the Dairy. The clauses of the agreements show that there is an actual sale, and not mere delivery of the milk and the other products to the concessionaire. The concessionaire purchases the milk from the Dairy. The Dairy raises a bill on the concessionaire and the amount is paid for. The Dairy merely fixed the MRP at which the concessionaire can sell the milk. Under the agreement the concessionaire cannot return the milk under any circumstance, which is another clear indi	**194H**	**HIGH COURT OF DELHI**

	230	**VIRTUAL SOFT SYSTEMS LTD. Vs. CIT, ITA No. 216/2011, Judgment delivered on: 07.02.2012, In finance lease "lease equalization charge" as per ICAI Guidelines is allowable claim** The assessee received lease charges and claimed a reduction towards "lease equalization charges" on the ground that reduction was in accordance with the Guidance Note issued by the ICAI in respect of Accounting for Leases and the Accounting Standard AS-1 notified u/s 145 which mandated that the accounting policy of the assessee should represent a true and fair view. The AO & CIT (A) rejected the claim on the ground that it was a "notional charge" and that the accounting guidelines could not override the Act. The Tribunal allowed the claim. On appeal by the department, HELD dismissing the appeal: As the method for accounting for lease rentals was based on the Guidance Note "Accounting For Leases" issued by the ICAI, the AO was not entitled to disregard the same. The Guidance Note reflects the best practices adopted by accountants the world over and the fact	145	**HIGH COURT OF DELHI**
20-Feb-12	231	**Rajendra Singh Vs. C.C.I.T, Civil Writ Jurisdiction Case No. 10707 of 2011, Date of Judgment: 02/02/2012,** **Interrogation till late night amounts to "torture" & violation of "human rights"** The assessee filed a complaint before the Bihar Human Rights Commission stating that interrogation & recording of statement was conducted for more than 30 hours and till the odd hours of the night without any break or interval and this violated his human rights. The Commission upheld the plea and directed the concerned officials to show-cause why the assessee should not be compensated from their salary. The Department filed a Writ Petition to challenge the order. HELD by the Court: "The search and seizure manual does not prescribe any time limit for search and survey operation and the same may continue for days if required, but it has to be in keeping with the basic human rights and dignity of an individual. There is no possible justification to continue interrogation and keep the assessee awake till 3 a.m. on the second night of search a	132	**HIGH COURT OF PATNA**

	232	**M/s. Darshan Securities Pvt. Ltd. Vs. C.I.T, I.T.A NO. 2886 OF 2009, Date of Judgment: 02/02/2012,** **Issue:** The assessee set off the share trading loss from the service charges and claimed that as its' gross total income comprised mainly of dividend income, the Explanation to s. 73 was not applicable. The department claimed that the share trading loss had to be kept out of the computation for determining whether or not the gross total income comprised mainly of dividend etc. The Tribunal rejected the department's plea. On appeal to the High Court, HELD dismissing the appeal: **Held:** The explanation to Section 73 provides as follows: "Where any part of the business of a company ([other than a company whose gross total income consists mainly of income which is chargeable under the heads "Interest on securities", "Income from house property", "Capital gains" and "Income from other	**73(1)**	**HIGH COURT OF BOMBAY**
21-Feb-12	**233**	**ARUN SHUNGLOO TRUST Vs. CIT, ITA No. 116/2011, Date of Decision: 13/02/2012, In case of transfer by gift, will, trust, etc indexed cost to be determined with reference to holding by previous owner** In Section 48 of the Act, the expression "asset held by the assessee "is not defined and, therefore, in the absence of any intention to the contrary the expression "asset held by the assessee in clause (iii) of the Explanation to Section 48 of the Act has to be construed in consonance with the meaning given in Section 2(42A) of the Act. If the meaning given in Section 2(42A) is not adopted in construing the words used in Section 48 of the Act, then the gains arising on transfer of a capital asset acquired under a gift or will be outside the purview of the capital gains tax which is not intended by the legislature. Therefore, the argument of the revenue which runs counter to the legislative intent cannot be accepted." The expression "held by the assessee" used in Explanation (iii) to s. 48 has to be understood in the context and harmoniously with other Sections and as the cost of acquisition stipulated i	**49**	**HIGH COURT OF DELHI**

	234	**M/s. Solid Works Corporation Vs. DDIT, ITA NO. 3219/MUM/2010, Date of pronouncement: 08/01/2012,** The assessee sold "shrink-wrap application software" called "Solidworks 2003″ to customers in India and claimed that the same was "business profits" and not assessable to tax as it did not a PE in India. The AO held that the income was assessable to tax as "royalty" u/s 9(1)(vi)/ Article 12(3) though the Tribunal (for an earlier year) reversed it on the ground that the product was a "copyrighted article" and not "copyright". HELD by the Tribunal: The ruling of the AAR in the case of Dassault (supra) was approved by the Hon'ble Delhi High Court in the case of DIT Vs. Ericsson AB, New Delhi (supra))[I.T.A No. 397,504,508 and 511 of 2007, Date of Decision : 23/12/2011]. It can therefore be said that the Hon'ble Delhi High Court has held that consideration paid merely for right to use cannot be held to	**9(1)(Vi)**	**ITAT - MUMBAI**
23-Feb-12	235	**TEXPORT INDUSTRIES P. LTD. Vs. COMMISSIONER OF SERVICE TAX, MUMBAI-IV, Final Order Nos. A/328-329/2011-WZB/C-IV(SMB), dated 4-8-2011 in Appeal Nos. ST/260-261/2010 (In favour of Assessee)** **Brief Fact of the Case:** i) Appellant/Assessee filed a refund claim for the input services used in export of goods by claiming the benefit of Notification 41/07 as amended. ii) The lower adjudicating authority as well as commissioner (A) rejected the refund claim for the service tax paid on technical testing and analysis service, on the ground that the condition of the Notification that there should be a written agreement was not fulfilled. **Held:** The lower authorities have denied the refund only on the ground that there is no written agreement between the exporter and his buyers. The ld. Commissioner (Appeals) did not accept it on the ground that this cannot be treated as agreement since it is between banks and not between concerned parties. I agree with the contention of the appellant that the letter of cr	**Notification No 41/07 OF SERVICE TAX**	**CESTAT-MUMBAI**

	236	**KHYATI TOURS & TRAVELS Vs. COMMISSIONER OF C. EX., AHMEDABAD, Final Order No. A/1059/2011-WZB/AHD, Stay Order No. S/859/2011-WZB/AHD, dated 13-6-2011 in Application No. ST/Stay/1121/2010 in Appeal No. ST/386/2010 (In Favour of Assessee)** **Brief Fact of the case:** i) Appellants/assesssee were engaged in the business of providing service namely "Rent-a-cab". On scrutiny of ST-3 return filed by the appellants for the period October, 2006 to March, 2007, it was observed that the appellants have discharged their service tax liabilities after availing abatement of 60% provided under Notification No. 1/2006-S.T., dated 1-3-2006 and simultaneously availed and utilized cenvat credit. However as per one of the condition of said Notification appellants/assesssee can not take CENVAT credit if availing abatement under said notification. ii) Appellants/assesssee had reversed CENVAT credit taken by them subsequently. As such,	**Notification No 1/2006 OF SERVICE TAX**	**CESTAT-AHMEDABAD**
27-Feb-12	237	**Catholic Syrian Bank Ltd. Vs. CIT, CIVIL APPEAL NO. 1143 of 2011 , Date of Judgment: 17/02/2012,** Whether a bank was eligible to claim a deduction for bad debts u/s 36(1)(vii) in respect of its (rural & urban) advances and also claim a provision for bad and doubtful debts u/s 36(1)(viia) in respect of its rural advances in view of the Proviso to s. 36(1)(vii). Firstly, CBDT itself has recognized the position that a bank would be entitled to both the deduction, one under clause (vii) on the basis of actual write off and another, on the basis of clause (viia) in respect of a mere provision. Further, to prevent double deduction, the proviso to clause (vii) was inserted which says that in respect of bad debt(s) arising out of	**36(1)(Vii)**	**SUPREME COURT OF INDIA**
	238	**Late Dr. B.V.Raju Vs. Asst. CIT, ITA No. 1034/Hyd/2004, Date of Pronouncement: 13/02/2012,** **Issue:** Whether the amount received for non- competence fees pursuant to non competence agreement was chargeable to capital gain by taking nil cost in terms of section 55(2)(a) of the Act. **Held:** The sum in question was not paid for transfer of any intangible right in respect of manufacture, production or process of cement. So that provisions relating to capital gains are therefore not attracted. The amount was paid for "not carrying out any activity in relation to any business" and would fall within the ambit of Section 28(va)(a) of the Act. The payment in question clearly falls under the category of a payment for "not carrying out any activity in relation to any business" which at the relevant point of time of accrual in the hands of B.V.Raju, viz., 27.10.1999, was a capital receipt not chargeable to tax. Such	**55(2)(a)**	**ITAT-HYDERABAD**

29-Feb-12	239	**M/S. INDIAN DEL. (P) LTD Vs. CIT, ITR 133/1997, Judgment delivered on 15.02.2012,** Whether the assessee was entitled to deduction u/s 80HHC on sale made to UNICEF in India? Hon'ble High Court held that provisions of Section 80-HHC required two conditions to be satisfied before an assessee could claim deduction there under. The two conditions being:- (i) the goods being export out of India and (ii) Sale proceeds of goods or merchandise exported out of India are receivable in convertible foreign exchange. The above conditions are satisfied cumulatively. Here sale made to UNICEF in India would not amount to export of goods. Accordingly the assessee is not entitled to deduction U/s 80-HHC of the Act.	**80-HHC**	**HIGH COURT OF DELHI**
	240	**Pioneer Marbles & Interiors Pvt Ltd Vs. D.C.I.T, I.T.A. No.: 1326/Kol/2011, Date of pronouncing: 17/02/2012,** Immunity from section 271AAA penalty available even if tax on undisclosed income unpaid till passing assessment order **Issue:** During course of search operation the assessee has declared unaccounted income u/s 132(4) of the Act, and the taxes due on the same were paid only after the passing of the assessment order. The AO contention that the taxes were not paid at the time of filing the ROI so immunity from penalty u/s 271AAA was not available. **Held:** In section 271AAA, there is no precondition that the tax along with interest must be paid before filing of return or any other specified date and accordingly where entire tax and interest has been duly paid well within the time limit for payment of notice of demand under section 156 and well before the penalty proceedings were concluded, the assessee could not	**271AAA(2)**	**ITAT-KOLKATA**

01-Mar-12	**241**	**LOK PRIYA TRAVELS Vs. COMMISSIONER OF S.T., AHMEDABAD, Final Order No. A/1406/2011-WZB/AHD, dated 12-8-2011 in Appeal No. ST/170/2009 (In favour of revenue)** **Held:** It was also contended by the appellants that they were not aware that they had to pay service tax. Though it was a fact that they have taken service tax registration, they never disclosed the nature of services rendered nor they furnished ST-3 returns, which was mandatory for a person providing taxable services. The question naturally arises that if they were not aware that they had to pay service tax, why should they take a service tax registration. We are of the opinion that non-furnishing of information or non-filing of returns resulted in non-payment of service tax and this action on the part of appellants tantamounts to deliberate non-compliance with the provisions. In other words, this is only implying suppression of facts with an intent to evade payment of service tax. Therefore, the extended period, under Se	**73(1)**	**CESTAT-AHMEDABA D**
	242	**COMMISSIONER OF S.T., AHMEDABAD Vs. RIDDHI SIDDHI GLUCO BIOLS LTD. Final Order No. A/1580/2011-WZB/AHD, dated 26-8-2011 in Appeal No. ST/97/2010, (In favour of assessee)** **Held:** On going through the Show Cause Notice, I find that the Show Cause Notice clearly says that "During the verification of refund claim, it is found that the assessee has not submitted any proof regarding the authorization of the port in the case of port service provider. Hence, the refund claim relating to port service is not admissible to the assessee." By taking the ground that the Service Tax was paid under Business Auxiliary Service head and therefore the credit is not admissible, Revenue is bring out a totally new ground which was not mentioned in the Show Cause Notice and therefore the respondent did not get an opportunity to contest the ground. At this stage, it will not be appropriate to consider this ground. In	**Notification No 41/07OF SERVICE TAX**	**CESTAT-AHMEDABA D**

05-Mar-12	**243**	**Amalner Co-operative Bank Ltd. Vs. Commissioner of C. EX., Nashik (CESTAT Mumbai) Final Order No. A/316/2011- WZB/C-IV(SMB), Dated: 6-7-2011 in Appeal No. ST/14/2010 (In favour of assesse)** **Brief Facts of the Case:** 1. On 19-9-2005, the appellant/assessee surrendered their service tax registration on the ground that the appellant are entitled for the benefit of Notification 6/2005, dated 1-3-2005 as their taxable services are below Rs. 4 lakhs. 2. Thereafter, in January 2008 a survey was conducted at the premises of the appellant wherein it was found that the appellant had wrongly availed the benefit of Notification 6/2005 and claimed exemption thereunder. Therefore, it was found that appellants are liable to pay service tax for the entire period. **Held:** After considering the submissions made by both sides. I find that it is not a disputed fact that on 19-9-2005, the appellant had surrendered the service tax registration by availing the	**77**	**CESTAT - MUMBAI**
	244	**EM PEE Motors Ltd. Vs. Commissioner of Central Excise, Chandigarh (CESTAT Delhi), Final Order No. ST/412/2011(PB), dated 26-8-2011 in Appeal No. ST/665/2007 (In favour of Revenue)** **Brief fact of the case:** 1. The appellant/assessee provided services of Authorized Service Station and Business Auxiliary Services. They had acted as agent for promoting vehicle loans for which the Bank paid them commission. Out of the commission paid by the Bank, they were in fact paying some amount to the loan seekers as an incentive for taking the loan through them. While paying service tax for amounts received as commission, the appellant deducted the amounts paid to customers from the amount received from the bank and paid service tax only on the remaining portion of the commission. 2. The Revenue made out a case that they should have paid tax on the full amount received from the bank and issued a show cause notice to the appellant demanding tax which was	**67**	**CESTAT - DELHI**

09-Mar-12	245	**SAK Industries Pvt. Ltd. Vs. Dy. CIT, W.P.(C) 7933/2010, Date of Decision: 16th February 2012,** Assessee filed writ petition to challenge the reopening of assessment u/s 147 on the ground that AO has not disposed off objection in speaking manner. HELD by the High Court quashing the reassessment order: In pursuant to GKN Driveshaft [259 ITR 19 (SC)] the AO was under an obligation to dispose of the objections to the reopening by passing a speaking order, he passed a non-speaking and cryptic order. Further, though the AO had sufficient time to complete the assessment, he had proceeded with the reassessment proceedings with undesirable haste and hurry, in violation of principles of natural justice and contrary to the procedure mandated and this had resulted in a miscarriage of justice. The fact that the assessee had an alternative	**147**	**HIGH COURT OF DELHI**
	246	**M/s Varindra Construction Company Vs. CIT, ITA No. 209 of 2003, Date of Decision: 24.01.2012,** **Issue:** Whether assessing Officer has jurisdiction to rectify the original assessment u/s 154 of the Act, as it was change of opinion and the review of order passed by his predecessor was not permissible under law. **Held:** That assessing officer has a power to rectify the assessment by invoking the provisions of Section 154 of the Act. The rate of depreciation claimed by the assessee on trucks at 40% was wrongly allowed as the assessee was not plying trucks owned by it on hire but was utilizing the trucks for its own purposes and hence rate of depreciation applicable was 25%.	**154**	**HIGH COURT OF PUNJAB & HARYANA**

12-Mar-12	247	**Amalner Cooperative Bank Ltd. Vs. Commissioner of C. EX., Nashik (CESTAT Mumbai) Final Order No. A/316/2011- WZB/C-IV(SMB), dated: 06-07-2011 in Appeal No. ST/14/2010. (In favour of assesse)** **Brief Facts of the Case:** 1. On 19-9-2005, the appellant/assessee surrendered their service tax registration on the ground that the appellant are entitled for the benefit of Notification 6/2005, dated 1-3-2005 as their taxable services are below Rs. 4 lakhs. Thereafter, in January 2008 a survey was conducted at the premises of the appellant wherein it was found that the appellant had wrongly availed the benefit of Notification 6/2005 and claimed exemption thereunder. Therefore, it was found that appellants are liable to pay service tax for the entire period. Held: After considering the submissions made by both sides. I find that it is not a disputed fact that on 19-9-2005, the appellant had surrendered the service tax registration by availing the	**77**	**CESTAT - MUMBAI**
	248	**Strategic Engineering P. Ltd. Vs. Additional Commissioner C. EX., MADURAI (Madras HC), W.P. (MD) No. 11427 of 2006, decided on 08-08-2011 (In favour of Assessee)** **Brief fact of the case:** 1. The petitioner /assessee were engaged in manufacture of FRP Pipes, falling under Chapter No. 7014.00 of the Central Excise Tariff. The petitioner Company also carries on the business of laying of GRP Pipes to its customers from whom it receives the labour charges. 2. Department contended that above services were taxable under following taxable services (a) Erection, Commissioning and Installation' for receipt of labour charges for Erection of pipes and laying of pipes; and (b) 'Scientific or Technical Consultancy services' rendered by the Petitioner company to its non-resident clients. 3. The petitioner/assesse contended that it was not a taxable services accordingly filed writ petition against the order of Commissioner of Central Excise. **Held:** 1. Court held that after admitting writ petition even though alternate statutory remedy available, it can be decided on merit basis. (Para 6 & 7) 2. Court held that services in given case was taxable under works contract services and it was	**65(105)(zzzz a)**	**HIGH COURT OF MADRAS**

14-Mar-12	249	**M/s Vijay Corporation Vs. ITO, ITA NO. 1511/MUM/2010, Date of pronouncement: 20/01/2012,** **Section 143(3) assessment order without AO's signature is Void** Provisions of Section 143 (3) of the Act contemplate that the AO shall pass an order of assessment in writing. Therefore requirement of signature of the AO is a legal requirement. The omission to sign the order of assessment cannot be explained by relying on the provisions of Sec.292B of the Act. If the notice of demand signed by the office of the AO without the existence of a duly signed order of assessment by the AO then this amounts to delegation of power of the AO u/s 143(3) of the Act, which is not the intent and purpose of the Act. An unsigned order of assessment cannot be said to be in substance and effect in conformity with or according to the intent and purpose of the Act. We therefore hold that the order of assessment is invalid. The appeal of the Assessee is accepted on this ground.	143(3)	ITAT-MUMBAI
	250	**SEPCO III Electric Power Construction Vs. Mr. Vivek Kumar Upadhyay, ADIT(IT), A.A.R. No. 1008 of 2010, Date of Judgment: 31/01/2012,** **Issue:** Whether the amounts received/receivable by SEPCO III, China from JPL India for Offshore supply of Equipments, under Offshore Supply contract are liable to tax in India under the provisions of the Income-tax Act, 1961 ('Act')? **Held:** The amounts received/receivable by the applicant from M/s Jhajjar Power Ltd. for off-shore supply of equipments in terms of the contract dated 1.6.2009 is not liable to tax in India under the provisions of the Income-tax Act, 1961, in view of the decision of the Supreme Court in Ishika Wajima Harima Heavy Industries Ltd [2007] 228ITR408.	245R(2)	AAR (INCOME TAX) - NEW DELHI

15-Mar-12	251	**LANCO INFRATECH LTD. Versus CESTAT, BANGALORE, Writ Petition No. 4262 of 2011, decided on 28-2-2011** **Brief fact of the case:** I. The appellant/assessee availed the benefit under the Works Contracts Composition Scheme in respect of contracts entered into prior to 1-6-2007. II. The respondent/department issued show cause notice proposing service tax, interest and penalty on the ground that the petitioner was not eligible to avail the benefit under the Composition Scheme. III. Being aggrieved, the petitioner went in appeal under Section 35B of the Central Excise Act, 1944 (the Act). The petitioner also moved an interlocutory application seeking waiver of pre-deposit and stay of recovery of service tax and penalty. IV. By the impugned order the learned CESTAT, permitted waiver of pre-deposit and stay of recovery on condition of the petitioner depositing Rs. 2.66 crores. **Held:** HC held that the impugned order does not suffer from any error much less grave error	**65(105)(zzzza)**	**HIGH COURT OF ANDHRA PRADESH**
	252	**SAP LABS INDIA PVT. LTD. VS COMMISSIONER OF C. EX., BANGALORE (CESTAT BANGALORE), Final Order No. 30/2011, dated 5-1-2011 in Appeal No. ST/169/2009 (In favour of Revenue)** **Brief fact of the case:** I. The appellant/assessee herein filed a refund application with the authorities on the ground that the service tax paid by them should not have been paid. II. The adjudicating authority after following the Principles of natural justice, rejected the refund claim on various grounds, including the ground of unjust enrichment. **Held:** Despite given a chance, the appellants have not produced any record or evidence to indicate that they have not passed on the element of service tax. In the absence of any such evidence, I find that the order of the Commissioner (Appeals) is correct and legal and does not suffer from any infirmity. The appeal is rejected.	**Section 11B of Central Excise Act, 1944**	**CESTAT-BANGALORE**

19-Mar-12	**253**	**Vatika Limited Vs. ITO, W.P.(C) 13878/2009, Date of Decision: 13/02/2012,** **Issue:** whether notice u/s 148 is valid even if it issued after four year and assessee has disclosed full & true particular of claim at the time of original assessment proceeding. **Held:** Assessee had disclosed full and true particular relating to claim of depreciation at time of original assessment then assessing officer has no jurisdiction to issue notice under section 148 of the Act, after the period of four year from the end of relevant assessment year. We, therefore, issue a writ of certiorari quashing the notice under Section 148 of the Act.	**148**	**HIGH COURT OF DELHI**
	254	**Tejinder Singh Vs DCIT, I.T.A. No.: 1459/ Kol. / 2011, Date of the order : 29/02/2012,** Whether Section 50C is applicable on transfer of leasehold right in building. Section 50 C can come into play only in a situation "where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government …… for the purpose of payment of stamp duty in respect of such transfer". Clearly, therefore, it is sine qua non for application of Section 50 C that the transfer must be of a "capital asset, being land or building or both", but then a leasehold right in such a capital asset cannot be equated with the capital asset per se. Therefore, when a leasehold right in "land or building or both" is transferred, the provisions of Section 50C cannot be invoked	**50C**	**ITAT-KOLKATA**
21-Mar-12	**255**	**Shri Shreyas S. Morakhia Vs. CIT, I.T.A No. 89/2011, Date of Judgment: 28/02/2012,** **Issue:** Whether share broker, is entitled to deduction by way of bad debts under Section 36(1)(vii) read with Section 36(2) of the Income Tax Act, 1961 in respect of the amount which could not be recovered from its clients in respect of transactions effected by him on behalf of his clients apart from the commission earned by him. **Held:** Section 36(2)(i) provides that a deduction on account of a bad debt can be allowed only where such debt or part thereof has been taken into account in computing the income of the assessee. The brokerage having been credited to the profit and loss account of the assessee, it is evident that a part of the debt is taken into account in computing the income of the assessee. The fact that the liability to pay the brokerage may arise, as contended by the Revenue, at a point in time anterior to the liability to pay the value of the shares transacted would not make any material difference to the position. Both constitute a part of the debt which arises	**36(2)(i)**	**HIGH COURT OF BOMBAY**

	256	**M/s. Catholic Relief Services Vs. ACIT, ITA No. 2742 to 2744/Del /2011, Date of pronouncement 13/01/2012,** The AO passed an order dated 27.4.2010 u/s 201(1) / 201(1A) for FYs 2002-03, 2003-04 and 2004-05 in respect of TDS on salary & perquisites of expatriate employees. Assessee argued that as the order was passed after 4 years from the end of the FY, it was barred by limitation. On appeal by the department, HELD dismissing the appeal. Section 201(3) inserted by the FA 2009 w.e.f. 1.4.2010 imposes a time limit for the passing of section 201 orders. The Proviso to section 201(3) provides that an order for a financial year commencing on or before 1.4.2007 may be passed at any time on or before 31.3.2011. In the present case, the proceedings were initiated after the search on 16.11.2009. On this date, the amended provisions of section 201 (3) had not come into force. The section 201 order was consequently beyond limitation.	201(3)	ITAT- DELHI
24-Mar-12	257	**Ganesh Housing Corporation Ltd. Vs. DCIT, Special Civil Application No. 15067/2011, Date: 12/03/2012,** **Issue:** Whether reopening of assessment 147, even within 4 years, on basis of retrospective amendment to section 80-IB (10) valid. **Held:** As regards the retrospective amendment, if an Explanation is added to a section for the removal of doubts, the implication is that the law was the same from the very beginning and the same is further explained by way of addition of the Explanation. It is not a case of introduction of a new provision of law by retrospective operation. Assessee had placed all the material before the Assessing Officer and where there was a doubt even that was clarified by the assessee in its letter dated November 8, 1995. If the Assessing Officer, while passing the original assessment order, chose not to give any finding in this regard, that cannot give him or his successor in office a reason to reopen the	147	HIGH COURT OF GUJARAT

	258	**Basu Distributor Pvt. Ltd. Vs. ACIT, ITA No. 56/2011, Date of Decision: 06/02/2012, Section 40A (3): Financial crises may be "exceptional or unavoidable circumstance" for cash payment.** The assessee made payments exceeding Rs. 10,000 in cash and claimed that a disallowance u/s 40A(3) read with Rule 6DD(j) & Circular No.220 dated 31.05.1997 could not be made as a payment by cheque etc was not possible due to "exceptional or unavoidable circumstances" etc. Section 40A (3) & Rule 6 DD (j) have been incorporated in the Act to check the incurring of bogus and fictitious expenses to non existing parties. In the present case, there is no dispute on the identity of the payee and genuineness of the transaction. The only question is whether the assessee has been able to establish "exceptional or unavoidable circumstances" why the payment made in cash. The assessee was not doing well in its business and was facing liquidity and financial crunch. The assessee's explanation that payments were made in cash as preparation of a bank draft or issue of cheque would have resulted in a missed	40A(3)	HIGH COURT OF DELHI
26-Mar-12	259	**DG Housing Projects Ltd. Vs. ITO, ITA No. 179/2011, Date of Decision: 01/03/2012, Issue:** Whether Tribunal rightly reversed the CIT order on the ground that he had not come to the conclusion that the actual receipt of consideration was more than what was declared in the return. On appeal by the department to the High Court, HELD dismissing the appeal: A distinction must be drawn in the cases where the Assessing Officer does not conduct an enquiry; as lack of enquiry by itself renders the order being erroneous and prejudicial to the interest of the Revenue and cases where the Assessing Officer conducts enquiry but finding recorded is erroneous and which is also prejudicial to the interest of the Revenue. In latter cases, the CIT has to examine the order of the Assessing Officer on merits or the decision taken by the Assessing Officer on merits and then hold and form an opinion on merits that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. In the second set of cases, CIT cannot direct the Assessing Officer to conduct further enquiry to verify and find out whether the order passed is erroneous or not. The CIT is	263	HIGH COURT OF DELHI

	260	**Crompton Creaves Ltd. Vs. DCIT (TDS), ITA No. 2210/MUM/2000, Date of pronouncement: 24/02/2012,** The assessee made a public issue of Global Depository Receipts (GDR) for which it engaged international lead managers like Jardine Fleming, Merrill Lynch etc and paid management and underwriting commission without deducting TDS. The AO & CIT (A) held that the said commission constituted "fees for technical services" and that the assessee ought to have deducted TDS u/s 195. The assessee was held to be in default u/s 201. Before the Tribunal, the assessee argued that as no action has been taken by the department against the payees and the time for taking such action had expired, no order u/s 195 & 201 could be passed.	**195**	**ITAT-Mumbai**
28-Mar-12	**261**	**Vigyan Gurukul Vs. Commissioner of C. EX., Jaipur-I (CESTAT Delhi) Final Order No. ST/453/2011(PB), dated 09-09-2011 in Appeal No. ST/311/2007 (In favour of Assessee) Issue:** DETERMINATION OF DATE OF WHICH RATE OF SERVICE TAX SHALL BE ADOPTED:In our analysis of Service Tax Rules, 1994 and Point of Taxation Rules, 2011 dated 24.03.2012. We have concluded that date of determination RATE of service tax shall be date when point of taxation is determined (i.e., Issue of invoice or receipt of payment, whichever is earlier). Same has been held by Delhi Tribunal in the given case. **Held:** It was held that rate of tax shall be of the date of receipt of payment if the assessee has chosen to pay tax on the advance amount received. We are of the view that during the relevant time the rate that was applicable at the time of receipt of value of service will apply in a case where the assessee chose to pay tax on the advance amount received. (Para 12)	**POINT OF TAXATION RULES,2011**	**CESTAT - DELHI**

	262	**GIMATEX Industries Pvt. Ltd. Vs. Commissioner of C. EX., Nagpur (CESTAT Mumbai) Final Order Nos. A/297-298/2011-WZB/C-IV(SMB), Dated: 14-07-2011 in Appeal Nos. E/1146-1147/2009-Mum** **Issue:** For the period beyond 18-4-2006, whether the appellant entitled to utilize Cenvat credit for payment of Service tax on GTA services while he is person liable to pay service tax under section 68(2) of Finance Act, 1994 read with Rule 2(1)(d) of Service Tax Rules, 1994. **Held:** In view of the above, I do not find any infirmity with the lower authorities concurrent findings regarding confirmation of demand and interest against the appellants. However, considering the dispute and the various conflicting decisions on the issue, imposition of penalty is not justifiable in this case. (Para 7)	**68(2) of Finance Act, 1994 read with Rule 2(1)(d) of Service Tax Rules, 1994.**	**CESTAT-MUMBAI**
30-Mar-12	**263**	**Gem Sanitary Appliances P. Ltd. Vs. CCIT, W.P. (C) Nos. 5621/2008 & 5649/2010, Date of Judgment: 07/02/2012,** Assessee filed Writ petitions against the order passed by Chief Commissioner for not allowing waiver interest under Section 234A, 234B and 234C of the Act. Held that, the petitioner will be entitled to waiver of interest to the extent of 30% in two assessment years on the two grounds. Firstly, this is not mentioned in the impugned order passed by the Chief Commissioner of Income Tax dated 7th April, 2008. The impugned order has to be read and can be defended on the ground and reasons stated therein (Refer M.S. Gill versus Chief Election Commissioner, (1978) 1 SCC 405). Secondly that petitioner has been making payment to the respondents from time to time. The amounts paid, it appears have been adjusted first towards the interest due and then towards the principal amount.	**234A/B/C**	**HIGH COURT OF DELHI**

	264	**Karan Raghav Exports Pvt. Ltd. Vs. CIT, ITA No. 1152/2011, Date of Judgment: 14/03/2012, High Court of Delhi** Whether the ITAT was justified in confirming penalty under Section 271(1)(c) of the Income Tax Act, 1961 on the ground that assessee has furnished inaccurate particulars of income for claiming depreciation on building. Held that there is no finding recorded by assessing officer that any details supplied by the assessee in its return were found to be incorrect or erroneous or false. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars."	**271(1)(C.)**	**HIGH COURT OF DELHI**