SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD APRIL TO JUNE 2011

DATE	S. NO.	TOPIC	RELEVANT SEC. (IF ANY)	JUDGMENT PASSED BY
	63	CIT Vs. GOVIND NAGAR SUGAR LTD, ITA NO. 164/2008, DATE OF ORDER : 25.03.2011, (a) Whether ITAT was correct in law in holding that for carried forward of unabsorbed depreciation, it was not necessary that the return should have been filed with in the time allowed under section 139(1) read with section 139(3) of the Income Tax Act? (b) Whether ITAT was correct in law in holding that the provisions of section 80 of the Income Tax Act do not apply to unabsorbed depreciation covered by section 32(2) of the Act? Judgment From the above, it comes out that the effect of Section 32(2) is that unabsorbed depreciation of a year becomes part of depreciation of subsequent year by legal fiction and when it becomes part of current year depreciation it is liable to be set off against any other income, irrespective of the fact that the earlier years return was filed in time or not.	Section 139(1) read with section 139(3)	DELHI HIGH COURT
05-04-2011	64	CIT Vs. THREE DEE EXIM PVT. LTD., I.T.A. NO.1604/2010, DATE OF DECISION: 25.03.2011, That service of notice, a contemplated pre-condition before assessment would be a question of fact depending upon the facts and circumstances of each case. In the present case, not only that no objection was raised with regard to non-issue of notice dated 27.03.2006, the assessee vide its letter dated 11th December, 2006 adopted the return as originally filed as the return in response to the said notice under Section 148. It was only thereafter that the AO proceeded with the reassessment proceedings. During the assessment proceedings, certain queries were raised to which the assessee gave detailed response. Even during the reassessment proceedings no objection was raised of any kind with regard to defect or irregularity in the notice. In a given situation, as in the present case when the assessee appears before the Assessing Officer and is given copy thereof before assessment and also makes correspondence and participates in the assessment proceedings, notice issued at old address available on record may constitute service of	S. 148(1)	DELHI HIGH COURT

07-04-2011	65	M/S DURGA DASS DEVKI NANDAN Vs. ITO, PALAMPUR, ITA NO. 4 OF 2005, DATED: MARCH 11, 2011 That CBDT cannot issue a circular which goes against the provisions of the Act. The CBDT has provided that either the amount of remuneration payable to each individual should be fixed in the agreement or the partnership agreement deed should lay down the manner of quantifying such remuneration. When the partnership deed provides that the remuneration will be as per the provisions of the Income-tax Act, it clearly means that the remuneration payable to the partners shall be quantified as per the provisions of the Act and shall not exceed the maximum remuneration provided. It is not disputed that the partners were paid remuneration which was less than the maximum provided by the Income-tax Act. None of the authorities have doubted the payment of remuneration and in fact account books of the assessee firm have been accepted to be correct. Therefore, nobody has doubted the payment of remuneration to the partners.	S. 40(b)(v)	HIGH COURT OF HIMACHAL PRADESH
	66	CIT Vs. M/S DABWALI TRANSPORT COMPANY, ITA NO. 872 OF 2010 (O&M), DATED: MARCH 3, 2011 Mere fact that the assessee could not furnish evidence in support of the expenses claimed, was not by itself enough to hold that the assessee had furnished incorrect particulars of income consciously. Whether or not in the facts and circumstances of the case, an inference could be drawn that there was concealment of income or there was furnishing of incorrect particulars, is a question of fact.	S.271(1)(c)	HIGH COURT OF PUNJAB AND HARYANA
	67	ROYAL HYDRAULIC PVT LTD Vs. ITO, ITA NO. 8814 /MUM /2010, DATE OF ORDER : 28.02.2011 ASSESSMENT YEAR: 2006-2007 It has been held by the Supreme Court in the case of CIT vs Edward Keventer P Ltd that no part of remuneration paid to director could be regarded as excessive or unreasonable, if the legitimate business need of the company and the benefit derived by or accruing to it therefrom, were taken into account from the point of view of a businessman. Although this decision was cited before the CIT(A), the CIT(A) has not considered the same. His findings are on general basis while upholding the action of the Assessing Officer. It is the well settled proposition of law that the Assessing Officer cannot direct the assessee to conduct its business in a particular manner. It is for the assessee how to conduct its business in a particular manner.	S.40A(2)(b)	ITAT – MUMBAI

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09-04-2011	68	M/s CRESCENT CHEMICALS Vs. ITO, ITA No. 1355 /Mum / 2010, DATE OF ORDER : 21.01.2011 Assessment Year: 2006-2007 Assessee firm is an importer and trader in chemicals, plastics and polymer products. During the course of the proceedings the A.O. noted that the assessee firm claimed the expenditure on account of freight and forwarding charges The A.O. further noted that the some of the expenditure was incurred in cash towards freight and forwarding, transport, loading and unloading charges and that was only supported by self-made vouchers. The A.O., therefore, made ad-hoc disallowance of 20% of the freight expenditure, as in his opinion, there was no proper evidence to support the claim to some extent. CIT(A) restricted the disallowance to the tune of 10%. Both the authorities below have made the ad-hoc disallowance. But there is force in the argument of the Counsel that on many occasions, isolated transporters and labourers are required to be engaged when it is not possible to get their bills. Nowhere it is a case of the A.O. that any of the expenditure was found to be bogus. There is no reason to confirm the disallowance	S. 37	ITAT - MUMBAI
	69	J K INDUSTRIES LTD Vs. CIT, ITA NO. 624 OF 2004, DATED: MARCH 17, 2011 The fact that his wife also accompanied him on such tour is not in dispute. It was a decision of the Company to send her for promoting better business understanding and as a matter of reciprocity in international business for the reasons thought fit by the Company. Therefore, the reason assigned by the Tribunal, that as the wife of the Managing Director is not an employee the expenditure made for her foreign tour cannot be accepted as business expenditure, is not tenable in the eye of law. It is not the law that business expenditure should be limited to the expenditure made for an employee only. That when the Board of Directors of the assessee had thought it fit to spend on the foreign tour of the accompanying wife of the Managing Director for commercial expediency, the reasons being reflected in its resolution, it was not within the province of the Income-tax Authority to disallow such expenditure by sitting over the decision of the Board, in the absence of any specific bar created by the Statute for such expenditure. Thus, the expenditure	S.37	HIGH COURT OF CALCUTTA

13-04-2011	70	RAJ RATAN PALACE CO OP HSG SOCIETY LTD Vs. DCIT, ITA No. 674/Mum/2004, Assessment Year: 1997-1998 DATED: 25.02.2011, No part of the land was ever transferred by the society. The society merely gave permission to the developer to carry out development in the rear side of the existing building Raj Ratan Palace after demolishing a small bungalow, which was in existence. Clause 12 & 13 of the agreement dated 18/5/96 clearly mentions that the developer will pay compensation at Rs. 1431/- to the society and members; the sum was quantified at Rs. 2,00,16,828/-. Out of this only a sum of Rs. 2,51,000 was paid to the society. Admittedly the remaining sum and the additional sum payable under clause 13 of the agreement dated 18/5/96 was paid to the individual members of the society under 51 different agreements. Thus it is clear that the assessee did not part with any rights and did not receive any consideration except a sum of Rs.2,51,000. In such circumstances, we fail to see as to how there could be any incidence of taxation in the hands of the assessee; besides this, the order of the Assessing Officer is vague. It is not clear as to whether the sum in question is brought to tax as cap	S.2(24)	ITAT – MUMBAI
	71	ELEGANT MARBLES & GRANITE INDUSTRIES LTD Vs. DCIT, ITA NO.1601/MUM/2010, A.Y.: 2006-2007, DATED: JANUARY 21, 2011, The Special Bench held that the amendment in clause [d] was prospective and not clarificatory in nature; it is clear that the loss in Futures incurred by the assessee for A.Y 2005-06 would be a speculative loss. The short term capital gain against which the Assessee seeks to set off the brought forward speculation loss is not a speculation income. The brought forward speculation loss could not be set off against short term capital gain as it was not a speculation income. In view of the provisions of section 73(2) of the Act the speculation loss carried forward could be set off only against the profits of speculation business. We, therefore, do not find any merits in the case of the Assessee on this issue. For the reasons stated above we uphold the order of the CIT(A).	S.14A	ITAT – MUMBAI

18-04-2011	72	GIVAUDAN FLAVOURS INDIA PVT LTD Vs. DEPUTY COMMISSIONER OF INCOME TAX, ITA No. 2672/ Mum/ 2009, Assessment Year: 2002-2003, Dated: March 7, 2011 That the additional ground raised regarding the jurisdiction u/s 147 is a pure question of law challenging the very assumption of jurisdiction to pass impugned order and merely because the assessee did not raise this grievance earlier the assessee cannot be prevented from raising this grievance. that as regards the question of interest disallowance, all the relevant facts were before the Assessing Officer, specific issued were raised during the original assessment proceedings and the submissions made by the assessee placed on record, and yet the Assessing Officer decided not to make any disallowance. There were no new facts before the Assessing Officer which could justify the reopening. On these facts, it was nothing more than change of mind by the Assessing Officer, and a reopening of assessment on the basis of change of opinion is not permissible in law. That as regards the CENVAT credit, it is tax neutral and, unless the condition of satisfaction about income having escaped assessment is satisfied, there cannot be any reopening of assessment	S.147	ITAT – MUMBAI
	73	CIT ....PETITIONER THROUGH MS. RASHMI CHOPRA, ADVOCATE Vs. KRISHNA GUPTA & ORS. WRIT PETITION (CIVIL) NO. 2174/2011, DATE OF ORDER: 31.03.2011, The Tribunal has the power to recall its earlier order disposing of an appeal under Section 254(1) of the Act, but the said power has to be exercised rarely and when a case for entire recall is made out. It cannot be exercised on every application moved under Section 254(2) of the Act. The reasons and grounds given in the application for recall of the order dated 12th February, 2004 do not justify exercise of power of making total recall. In fact what the petitioner wanted was re-hearing of the appeal on merits. The application under Section 254(2) of the Act is for rectification or modification of the order of the Tribunal when there is a mistake is apparent from the record. The Tribunal in the garb of mistake cannot give fresh hearing and re-examine the merits as an appellate court.	S.254(2)	HIGH COURT OF DELHI

21-04-2011	74	CIT Vs. THE SIMBHAOLI SUGAR MILLS LIMITED, ITA NOS.1391/2009, 1362/2009 & 1130/2009, DATE OF DECISION: 09.03.2011, From the above chronological narration of facts and the findings recorded by the authorities below, it is seen that the basis of issue of notice under Section 148 for re-assessment for the assessment year under consideration was nothing but the internal audit report. In the Reasons to Believe as recorded by the AO, he had mentioned about the objections as raised in the audit report. Based on this audit report, a review was sought to be made by the AO under the name of re-assessment alleging escape of income in the assessment already concluded. With regard to the aforesaid two entries, the particulars were already available before the AO. The assessee had made complete disclosure of the particulars before the AO in the proceedings of assessment under Section 143(3). Reopening of assessment after four years was apparently not permissible. There is a catena of judgments with regard to the proposition of law that assessment cannot be reopened under Section 147 of the Act merely on the basis of change of opinion beyond the period	S.147	HIGH COURT OF DELHI
25-04-2011	75	M/s LOK HOUSING AND CONSTRUCTIONS LTD Vs. ADDL. COMMISSIONER OF INCOME TAX, ITA No. 5224 & 5225 /Mum/ 2009, Assessment Years: 2007-08 & 2008-2009, Date of Pronouncement: 11/03/2011 Whether the defence of the assessee that due to the financial crunch it was not possible for the assessee to make the payment of taxes is good and reasonable cause. It is true that the assessee has shown substantial sales in both the assessment years. as per the copy of the Balance-sheet filed on record for the year ending 31.3.2007, the cash in hand as on 31.3.2007 was declared at Rs 1,60,71,286/- in addition to the balances in the bank plus F. Ds at Rs 2,44,55,643/- and Rs 3,06,47,176/- respectively. Hence, so far the financial year 2006-07 relevant to the A.Y. 2007-08 is concerned, in our opinion, the assessee has sufficient liquidity to pay the tax. So far as financial year 2007-08, as per the copy of the Balance-sheet as on 31.3.2008 relevant to the A.Y. 2008-09 the assessee has shown the cash in hand at Rs 2,36,48,223/- and balance with the Bank as well as fixed deposits are to the extent of Rs 1,34,76,101/- and Rs 4,05,37,644/- respect	S.221(1)	ITAT – MUMBAI

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	76	**Nagindas P. Sheth (HUF) Vs. ACIT 21 (3), ITA. No. 961/Mum/2010, A.Y. - 2006-2007, Date of Pronouncement : 05/04/2011,** **The fact that the assessee has transacted in 158 shares should not be the sole criterion to come to the conclusion that assessee is a trader in shares. The gains earned by the assessee deserve to be assessed as capital gains because:** **(a) the assessee was holding the shares in its books as an investor;** **(b) the assessee did not have any office or administration set up;** **(c) the shares were acquired out of own funds and family funds and not through borrowings;** **(d) there was not a single instance where the assessee had squared-up transactions on the same day without taking delivery of the shares;** **(e) In the previous and subsequent assessment years, the AO had vide scrutiny assessments treated the assessee as an investor.**	**S.143(3)**	**ITAT – MUMBAI**
27.04	77	**CIT Vs SHRI BHARAT R RUIA (HUF), MUMBAI, ITA No. 1539 OF 2010, Date of Order : Dated: April 18, 2011** **Whether the loss incurred from the derivative transactions carried on, on a recognized stock exchange during the year 2003-04 would constitute loss from speculative transaction as contemplated u/s 43(5) of the Act** **The exchange traded derivative transactions carried on by the assessee during AY 2003-04 are speculative transactions covered u/s 43(5) of the Act and the loss incurred in those transactions are liable to be treated as speculative loss and not business loss.** **Whether the clause (d) inserted to the proviso to Section 43(5) has retrospective effect.** **Clause (d) inserted to the proviso to Section 43(5) with effect from 1/4/2006 is prospective in nature.**	**S.43(5)**	**HIGH COURT OF BOMBAY**

27-04-2011	78	DCIT Vs SHRI SHANTILAL J SHAH, ITA No. 4085/Mum/2009, Assessment Year: 2004-2005, Date of Order : 04/03/2011 It is a common knowledge that tenanted property fetches very low value and assessee might have been able to purchase the property little cheap and the discount on such distress sale may go up even upto 20% to 30%. However, at the same time the property was purchased on 31-10-1979 and, admittedly, even on 1-4-1981 the property remained tenanted only. On a specific query by the Bench, the counsel of the assessee admitted that none of the tenants had left the property as on 1-4-1981, therefore, there was hardly any chance of appreciation; it would be fair to estimate some value and bring the matter to finality. Considering all the facts and circumstances of the case, the fair market value of the property as on 1-4-1981 would be Rs.2,50,000/-. Therefore, the AO is directed to adopt the value of the property at Rs.2,50,000/- as on 1-4-1981 for computing the capital gains.	S. 49	ITAT – MUMBAI
29-04-2011	79	M/S SWARAJ YARN AGENCY VS. CIT AND OTHERS.., CIVIL WRIT PETITION NO. 3085 OF 1994,DATE OF DECISION: 20.4.2011 Liability of the assessee to pay tax again if tax already paid to the bank is misappropriated by the employees of the approved bank with whom the amount is deposited.- if the receipts are genuine and it is found that petitioners have made the deposit with the bank, such deposit will be treated to be discharge of the liability of the petitioner even if bank has failed to credit the payments to the Central Government Account.	Payment of taxes	HIGH COURT OF PUNJAB AND HARYANA
	80	BHAGWATI APPLIANCE (NOW DAIRYDEN LTD.) - APPELLANT(S) VS. I.T.O., TAX APPEAL NO. 100 OF 2000, DATE OF JUDGMENT: 01/04/2011, Assessee company is a leasing company which is engaged in leasing of plant and machinery, motor cars, etc. to its client. It is neither the case of the assessee nor is there anything on record to indicate that the assessee uses the vehicles in question in its business of transportation or that the assessee is engaged in the business of hire. In the circumstances, the basic requirement for being entitled to depreciation at the higher rate of 50 per cent under Entry No.III(2)(ii) of Appendix-I to the Rules is not satisfied by the appellant. In other words, appellant does not pass the test for the applicability of Entry No.III(2)(ii) of Appendix-I appended to the Rules, viz., the user of the vehicles in the business of the assessee of transportation or the business of hire. The Tribunal was, therefore, justified in holding that the appellant is entitled to depreciation at the rate of 33.33 per cent and not at the rate of 50 per cent as claimed by it.	Entry No.III(2)(i) of Appendix-I of the Income Tax Rules, 1962	HIGH COURT OF GUJARAT

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02-05-2011	81	GUFFIC CHEM P. LTD. Vs. C.I.T. CIVIL APPEAL NO. 2522 OF 2011, DATE OF JUDGMENT : MARCH 16, 2011 Whether a payment under an agreement not to compete (negative covenant agreement) is a capital receipt or a revenue receipt. The position in law is clear and well settled. There is a dichotomy between receipt of compensation by an assessee for the loss of agency and receipt of compensation attributable to the negative/restrictive covenant. The compensation received for the loss of agency is a revenue receipt whereas the compensation attributable to a negative/restrictive covenant is a capital receipt.	S.28	SUPREME COURT OF INDIA
	82	THE COMMISSIONER OF INCOME TAX–V Vs. PEPSICO INDIA HOLDING PVT. LTD. I.T.A. NO. 574/2007, DATE OF DECISION : 09.03.2011, (i) Whether the learned Tribunal erred in allowing amortization of the preliminary expenses of Rs. 8,02,000/- (representing 1/10th of total expenses) eligible for deduction under Section 35D of the Act before the commencement of business operations? (ii) Whether in the facts & circumstances of the case the learned ITAT erred in deleting the addition made by the AO on account of excess consumption of sugar and manufacturing of extra soft drinks sold outside the books of accounts by relying on extraneous considerations? (iii) Whether the order of the learned ITAT is liable to be set aside on the ground that it erroneously records that the revised certificate was accepted by the AO while the Remand Report of the AO clearly mentions that even on the consideration of the revised certificate, an excess consumption of sugar by 1259 tonnes calculated on the basis of revised certificate of auditors and figures of consumption provided by the assessee? (iv) Whether the learned ITAT erred in holding the MODVAT credit is not to be included in the v (v) Whether the learned ITAT erred in deleting the addition of Rs.2,22,96,100/- on account of MO (vi) Whether the provisions of Explanation 5 to Section 32(i) of Income Tax Act, 1961 inserted w.e	S.35D	HIGH COURT OF DELHI

04-05-2011	83	COMMISSIONER OF INCOME TAX Vs. ELI LILLY & CO. INDIA PVT. LTD., ITA NO. 97 OF 2009 JUDGMENT RESERVED ON : 25.02.2011, ITA 97 OF 2009 & ITA 657/2010, HIGH COURT OF DELHI The adjustment made by the AO for the intimation issued under Section 143 (1) of the Act by way of a rectification order in respect of unabsorbed depreciation was beyond the scope of Section 154 of the Act. Thus, the Assessing officer had no power to take recourse to the provisions of Section 154 of the Act. It could not be stated that there was an error which could be corrected by invoking the provisions of Section 154 of the Act. The assessee had claimed the set off Rs 1,39,36,000 in terms of Explanation III (of (2) proviso to Section 164 JA (2) of the Act) as against the brought forward loss as per the books at Rs. 15,01,82,00/-. Thus, the matter related to the interpretation of the effect which is to be given to the aforesaid provision and, therefore, it was not a mistake which was to be corrected for which jurisdiction under Section 154 of the Act could be exercised.	S.154	HIGH COURT OF DELHI
	84	THE COMMISSIONER OF INCOME TAX-XVII, Vs. CADBURY INDIA LIMITED, ITA NOS. 1397/2008, 1398/2008 AND 429/2009, DATE OF DECISION : 28TH MARCH 2011, HIGH COURT OF DELHI AT NEW DELHI The assessee had been deducting tax from the payments payable to CFA under Section 194C on a consolidated basis towards different heads. There is no reason to disbelieve the assessee that the same was being done by its employees on misconceived professional advice given by the Chartered Accountants. Since the payment were to be deducted from CFA no benefit was to be derived by the assessee for making lesser or inaccurate deductions. No malafide intention of any kind can be attributed to the assessee for deducting tax under one provision of law than the other. This was neither the case of malafide intention nor that of negligent intention or want of bonafide, but a case of misconceived belief of applicability of one provision of law. We cannot say judiciously that the assessee has failed to comply with the provision of Section 194I and 194J of the Act without reasonable cause.	S.194C	HIGH COURT OF DELHI

10-05-2011	85	M/s BHARAT HEAVY ELECTRICALS LTD vs. DEPUTY COMMISSIONER OF INCOME TAX, ITA Nos. 1833 & 1834/ Del./ 2006 Assessment Years: 1997-98 & 98-99, DATE OF ORDER : 11TH MARCH 2011, ITAT – Delhi Non-compliance with the first proviso to section 147, therefore, renders the reopening of a completed assessment in the absence of any failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the relevant assessment year, void ab initio. Moreover, in the present case, as discussed hereinabove, not even an allegation of such failure has been made against the assessee company by the AO for either of the assessment years involved. Reliance by the assessee on Indian Farmers Fertilizers Coop. Ltd. (supra) is apt. Therein, it has been held that where in the reasons recorded in reopening, there was no allegation that the assessee had failed to disclose fully or truly all material facts necessary for its assessment, the AO was unjustified in taking action u/s 147/148 after the expiry of four years from the end of the respective relevant assessment year.	S.147	ITAT – Delhi
	86	VARDHAMAN AND HIRANANDANI DEVELOPERS Vs INCOME TAX OFFICER, Assessment Year 2007-08, ITA No. 6455/ Mum/ 2010, DATE OF ORDER : 28TH FEB. 2011, Whether cessation of the liability in the trading account is to be considered to be income of the assesse? Yes.	S.41(1)	ITAT – Mumbai

12-05-2011	87	COMMISSIONER OF INCOME-TAX, WEST BENGAL-III, CALCUTTA Vs. M/S. E.I.H. LIMITED, I.T.A. NO. 3 OF 2001, JUDGMENT ON: 31ST MARCH, 2011 "a) Whether on the facts and in the circumstances of the case the Ld. Tribunal has erred in law in confirming the deletion of disallowance of Rs.1,54,875/- on account of gifts when the tax audit report of the assessee has stated that the same is disallowable under Rule 6B of the I.T. Rules and that it is clearly covered by Section 37(2) of the I.T. Act, 1961." Rule 6B of the Income-Tax Rules deals with the 'expenditure on advertisement' and undisputedly on those gifts the name or logo of the assessee was not used and, therefore, in our view, the Commissioner of Income-Tax (Appeals) and the Tribunal rightly gave deduction of the said amount as business expenditure within the meaning of Section 37 of the Act. "b) Whether on the facts and in the circumstances of the case the Ld. Tribunal has erred in law in confirming the deletion of disallowance of Rs.3,04,89,602/- on account of depreciation of new aircraft when it was not put to use in contravention to provisions of Section 32 of the I.T. Act, 196 Phrase "used for the purpose of business" should be interpreted to mean that such plant or machi In the case before us, it has been established that the said aircraft was purchased for the business	37(2) read with Rule 6B of the I.T. Rules.	HIGH COURT AT CALCUTTA
	88	M/S COOL BREEZE AIRCON PVT. LTD. VS. INCOME-TAX OFFICER WARD 3(4) NEW DELHI, BENCH 'B', ITA NO. 4189(DEL)/2010, ORDER PRONOUNCED ON 6TH MAY, 2011 Merely because the audit report contains some additional words, which were not required as per prescribed form no. 3CA, the inclusion of these words does not lead to a conclusion that the audit report was not obtained and filed. Accordingly, Levy of penalty u/s 271B was not justified.	S.271B	ITAT DELHI

	89	ICICI BANK LTD Vs DEPUTY COMMISSIONER OF INCOME TAX, ITA No. 11/ Lkw /2011, Assessment Year : 2009-2010, Dated: March 23, 2011 Section 201, 201(1A) - Whether payment made by cheque is deemed to have been made on the date of delivery of cheque and not on the date of encashment. In the present case, it is noticed that the certificate issued by the Union Bank of India, Chandganj, Lucknow dated 10/02/2010 clearly mentioned that the assessee deposited income-tax amounting to Rs.2,15,73,701/- vide pay order No. 831222 dated 04/07/2008 which was credited in the account of the bank on 07/07/2008 through bankers clearing house so it is clear that the amount was collected by the authorized bank on behalf of the income tax authorities on 07/07/2008 so there was no default as far as the assessee is concerned. In this regard the CBDT has issued a Circular No. 261 dated 8th August 79 stating therein that in terms of rule 80 of the Compilation of the Treasury Rules, if a cheque or draft is tendered in payment of Government dues and accepted under the provisions of rule 79 (ibid) is honored on presentation the payment is	S. 201 & 201(1A)	ITAT-LUCKNOW
14-05-2011	90	ITO VS. M/S ONS CREATIONS PVT. LTD., I.T.A. NO. 3981/DEL/2010, A.Y. : 2006-07, INCOME TAX APPELLATE TRIBUNAL – DELHI, DATE OF ORDER : 13/05/2011 No liability to TDS in respect of freight charges (outward) paid on behalf of clients to C&F agents, which amounts were later on reimbursed by the clients. As such no disallowance of the same could be made u/s 40(a)(ia)	S.40(a)(ia)	ITAT-DELHI

	91	**DCIT Vs MARUTI COUNTRYWIDE AUTO FINANCIAL SERVICES PVT LTD, ITA No. 2181 to 2183/ Del/ 2010, Assessment Years : 2002-03, 2005-06 & 2006-07, Dated : April 29, 2011** **Whether expenses on account of loss on sale of repossessed assets is allowable as revenue expenditure - Whether provisions of the RBI Act override the provision of Income-tax Act for the purpose of claiming deduction under the Income Tax Act.** **The disallowance towards interest has been made by the AO only on the ground that the provisions of Income-tax Act could not be override by the provisions of the RBI Act. However, according to the decision of Delhi High Court in the case of CIT vs. Vasisth Chay Vyapar Ltd., Section 45Q of RBI Act will override the provisions of the Income-tax Act, therefore, the very basis of the disallowance made by the AO is not in accordance with the aforementioned decision of Delhi High Court. Therefore, there is no infirmity in the order of the CIT (A) vide which the disallowance has been deleted.**	**S.36**	**ITAT-DELHI**
	92	**COMMISSIONER OF INCOME TAX, JABALPUR Vs M/s VINDHYA TELELINKS LTD, ITR No.192/1997, Date of Order: February 22, 2011,** **Whether, if assessee gives certain amount as advance towards purchase of machinery but the machinery is not installed during the year, even then deduction u/s 32AB cannot be denied.** **When the Parliament inserts Section 32AB in the Income Tax Act, it meets out the contingency where the assessee deposits any amount for the purchase of any new machinery, then the assessee was allowed deduction of the amount. The language used in Section 32AB is very specific which provides that such amount must have been utilized for the purchase of any new machinery. When the statute itself provides such, which is entirely different from the provision as contained in Section 32A, natural inference is that the intention of the Legislature was to meet out such situation when such amount was not invested for the purchase of plant but it was deposited with the manufacturer for the purchase of new machinery.**	**S. 32AB**	**HIGH COURT OF MADHYA PRADESH**

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18-05-2011	93	TECH NOVA IMAGING SYSTEMS (P) LTD Vs ASSISTANT COMMISSIONER OF INCOME TAX, ITA Nos.5514/Mum/2007, A.Y.: 2002-2003, Dated: April 8, 2011, Whether when the assessee has not incurred any expenditure in relation to earning exempted income, the CIT (A) is right in disallowing 1% of the expenses observing the same as incurred for administration of transactions on which exempted income was earned. Held Yes.	S.14A	ITAT – Mumbai
	94	Commissioner of Income Tax Vs M/s Perfect Communication ITR No. 564 of 2011, Date of Order: April 7, 2011, Income Tax: - Section 205, 194H: - In this matter the assessee has let out its Mumbai based property on rent to one company. The Tenant while remitting the payments of rent informing continuously that it was deducting TDS as per the provision of section 194H. The AO denied the credit of TDS while processing the return under section 143(1)(a) of the Act. As a result of which assessee enquired into and found that the deductor tenant had not deposited any TDS on his account with the Govt - CIT (A) and ITAT all in chorus denied the claim of the assessee on the ground that claim of TDS is available only when the certificate of TDS is there- Matter reached to the High Court wherein the AR of the assessee draw the attention of their Lordship towards the provisions of section 205 of the Act and argued that the revenue can not demand the amount of TDS directly from the deductee.	S.194H read with 205	HIGH COURT OF DELHI

	95	**CIT VS. M/S SAMI LABS LIMITED, ITA NO. 231 OF 2009, DATED: 14 FEBRUARY 2011,** **Whether the TDS and pre-paid taxes should be set off against the total taxes payable and then only MAT credit should be allowed and on the MAT credit over which refund had been allowed, interest u/s. 244A has to be paid?** **That the MAT credit available to an assessee could be adjusted within a period of five years from the date of its accrual. The said credit should be set off while computing advance tax/self-assessment tax payable for the years two to six limited to the difference between the tax payable on income computed under the normal provisions and tax payable on book profits in each of those years, as per the assessee's own computation. That the MAT credit is to be set off first, thereafter TDS, then the advance tax paid and then the tax paid along with returns. However, no interest is claimable against the MAT credit. Therefore, it is clear that under no circumstances, MAT credit can become the subject matter of refund. It is only liable to be adjusted for five years and it does not carry any interest.**	**S.244A**	**KARNATAKA HIGH COURT**

20-05-2011	96	ACIT VS. M/S JINDAL EQUIPMENT LEASING & CONSULTANCY SERVICES LTD ITA NOS. 3808-3809/DEL/2010, ASSESSMENT YEARS: 1999-00 & 20001-2002, DATED: 21 APRIL 2011, Whether where the disallowance is made for proportionate expenses claimed in respect of exempted income, no penalty can be levied u/s 271(1)(c) as prior to insertion of Rule 8D by the Finance Act 2008, the question of disallowance and its quantification was contentious. That prior to the insertion of section 14A, there was a genuine difference of opinion as to whether expenditure related to exempt-income could be disallowed if the same has been incurred for the purpose of the business of the assessee. The position in regard to assessments is different, namely, that the question of allowance or disallowance has to be decided on the basis of law existing at the time of making it. Therefore, even if the disallowance has been confirmed in appeal, which by itself does not lead to the charge of concealment of income or furnishing inaccurate particulars of income. Otherwise all the facts regarding incurring of expenditure have been disclosed by the assessee in the return or in the course of assessment proceedings. Therefore, there has been no sup	S.271(1)©	ITAT – DELHI
	97	COMMISSIONER OF INCOME TAX Vs M/s SAS PHARMACEUTICALS, ITA No.1058 of 2009, Dated: April 8, 2011, Whether penalty can be levied u/s 271(1)(c) on the amount surrendered by the assessee during survey though the amount was declared by the assessee in the return filed by it after survey but before the due date of filing of return. - NO.	S.271(1)©	HIGH COURT OF DELHI

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24-05-2011	98	**COMMISSIONER OF INCOME TAX Vs ANKITECH PVT LTD, ITA No.462 of 2009, Dated: May 11, 2011, HIGH COURT OF DELHI** **Whether loan and advances received by the assessee company cannot be treated as deemed dividend in the hands of the assessee as it was not a shareholder of the lender company in which the shareholders having substantial interest in the assessee company were also having 10% of the voting power.** **That the intention behind the provisions of Section 2(22)(e) of the Act is to tax dividend in the hands of shareholders. The deeming provisions as it applies to the case of loans or advances by a company to a concern in which its shareholder has substantial interest, is based on the presumption that the loans or advances would ultimately be made available to the shareholders of the company giving the loan or advance. It is an admitted case that under normal circumstances, such a loan or advance given to the shareholders or to a concern, would not qualify as dividend. It has been made so by legal fiction created under Section 2(22)(e) of the Act. This legal provision relates to 'dividend'. Thus, by a deeming provision, it is the definition of divid The fiction has to stop here and is not to be extended further for broadening the concept of shareh**	**S. 2(22)(e)**	**HIGH COURT OF DELHI**

27-05-2011	99	ITO Vs. M/s Kailashpati Overseas Pvt. Ltd. ITA No. 4268 / Del / 2009, Assessment Year 2001 – 2002, ITAT – Delhi Whether when assessee submits the relevant details in respect of share application money such as PAN Number, confirmation and the bank particulars it can be said that the assessee has discharged its burden and no addition can be made on the basis of investigation averments, and it is incumbent on the AO to prove that averments of investigation wing applies in the case of the assessee-Held-Yes. In this case the assessee has received share application money from some persons- On the basis of investigation wing report AO reopened the assessment of the impugned years and direct the assessee to produce the share applicants- Assessee could not produce any body- AO made the addition- CIT(A) allowed the appeal of the assessee- Matter reached to the ITAT wherein the AR of the assessee points out that assessee has discharged its initial burden and the ball is in the court of AO to investigate further AR of the assessee relied on the decision of Oasis Hospitality-	S.68	ITAT-DELHI
	100	Dish India Micro credit Vs. CIT, 1374/ Del /2010, ITAT – Delhi Assessee a Company constituted under section 25 of the Companies Act and engaged in micro-financing activities means providing loans to the poor community of the society as per the guide lines of the RBI- It applies for registration of 12AA in the prescribed form - CIT referring to the incidental objects of the Company as prescribed in Memorandum of Association of the Company held that the activities of the Company are not charitable- On appeal before the ITAT, the AR of the assessee argued that the CIT has completely over looked the main objects, dissolution clause and restriction of RBI imposed on assessee, and has rejected the application of the assessee in a summary manner- Before ITAT AR of the assessee argued that at the stage of granting 12AA only prima facie conditions are to be looked into-ITAT decided the case in the favour of assessee.	S. 12 read with S. 25 of Companies Act.	ITAT-DELHI

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31-05	101	**COMMISSIONER OF INCOME TAX Vs M/s SAMSUNG INDIA ELECTRONICS LTD, ITA No.39/2010, Dated: April 20, 2011, HIGH COURT OF DELHI** **Section 40A(2)(a) of the Act contemplates that there should be some material available before the Assessing Officer for invoking Section 40A(2)(a) of the Act to initiate action to disallow or refuse to deduct the excessive or unreasonable expenditure mentioned there under. But, at the same time, before taking any final decision by invoking the power under Section 40A(2)(a) of the Act, either allowing or disallowing such expenditure incurred as excessive or unreasonable, such decision of the Assessing Officer should be based on reasons well-founded, which are judiciously acceptable and in which event, the finding or decision arrived at stating that the expenditure is excessive or unreasonable and the same cannot be allowed or deducted, certainly would become purely a question of fact, which the Court cannot interfere, in view of the ratio laid down in Commissioner of Income Tax v. T.T. Krishnamachary & Co. where under it is held that the finding that the payment was not excessive, as another party has also purchased at increased price**	**S. 40A(2)(a)**	**HIGH COURT OF DELHI**

31-05-2011	102	COMMISSIONER OF INCOME TAX Vs DELHI GOLF CLUB LTD, ITA No.1757 of 2010, Dated: March 30, 2011, HIGH COURT OF DELHI Whether assessee registered u/s 12A can be said to be carrying on commercial activities merely on the ground that the golf course was allowed to be used by casual members or non-members on a higher fee and hence, casual membership fee charged from them is to be construed as business. After giving careful consideration, the High Court was of the opinion that no substantial question of law is involved in the present case and the appeal warrants to be dismissed in limini; not only this position is accepted by the department that the assessee/Club would be a "charitable" in nature having regard to the objective for which it is established namely the promotion of the game of golf or sport, this position remains unchallenged for over six decades. This consistency in the approach is maintained except in the assessment in question. Curiously, even thereafter for subsequent assessment years, the department reverted to this position as is clear from the assessment for the assessment year 2007-08. These facts are sufficient to hold that r	S. 12A	HIGH COURT OF DELHI
04-06-2011	103	COMMISSIONER OF INCOME TAX, COIMBATORE Vs M/s ELGI EQUIPMENTS LTD, Tax Case (Appeal) Nos. 183 and 184 of 2008, Dated: April 29, 2011, Whether the income from lease operations, technical service charges and tyre retreading receipts are to be excluded while computing the deduction u/s 80HHC as these are not the main activities of the assessee and are covered under the expression any other receipt of a similar nature included in such profits under Clause (baa)(1) of section 80HHC. Following the judgement of supreme court in the case of Commissioner of Income-tax v. K.Ravindranathan Nair that the assessee was mainly doing the business of manufacture of compressors and garage machinaries, part of which was exported and the income from lease operation is treated as not falling in the main business activities and hence, the deduction under Section 80HHC was recomputed excluding the business and other income, is well founded.	S. 80HHC	HIGH COURT OF MADRAS

	104	MOHIT SINGH Vs ASST COMMISSIONER OF INCOME TAX & ANR, WP(C) No.7780/2009, Dated: January 18, 2011, Whether assessee is entitled to interest u/s 132B(4) for the period from the date of passing the order and till the date of refund received – Held - Yes	S. 132B(4)	HIGH COURT OF DELHI
07-06-2011	105	The Tata Power Co. Ltd., Vs. Addl. CIT, Range 2(1), I.T.A No.3382/ Mum/2010, Assessment year: 2005-06, Dated 31st May 2011, The assessee earned LTCG of Rs.233 crores and claimed deduction of Rs.124 crores u/s.54EC on account of investment in specified bonds of NABARD. The assessee also had brought forward long term capital loss of Rs.111 crores. The assessee first claimed deduction u/s 54EC and then, against the balance, set-off the brought forward losses. The CIT revised the assessment u/s 263 on the ground that the long-term capital loss had to be first set-off against the LTCG and the deduction u/s 54EC was allowable only on the balance. On appeal by the assessee to the Tribunal, HELD allowing the appeal: While s. 54EC is an exemption provision which exempts capital gains and takes them outside the purview of chargeable "capital gains", s. 74 deals with the carry forward and set off of loss under the head "capital gains". The stage at which set off of carried forward long term capital loss is to be given is subsequent to the stage at which income under the head capital gains is computed and deduction u/s 54EC is to be given in the course of the latter. Accordingly, s. 54EC deduction has to	S.54EC read with S. 74	ITAT – Mumbai

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	106	**DEPUTY COMMISSIONER OF INCOME TAX Vs. M/s AIG HOME FINANCE INDIA LTD, ITA No.2167/Mds/2010, Assessment Year: 2005-2006, Dated: 5th May 2011,** **Whether, even without doubting the payment of guarantee fee to third parties within a reasonable range, AO can make disallowance u/s 40A(2) on the ground that the third parties are shareholders in the assessee-company and they would have provided such services free of cost.** **That a perusal of provisions of Section 40A(2)(b) of the Act shows that this provision is applicable where an A.O. is of the opinion that the payment is excessive or unreasonable when such payments had been made to related parties. Here, the A.O. has not shown how the payment made by the assessee to M/s Weizmann Ltd. was unreasonable or excessive.**	**S. 40A(2)**	**ITAT – Chennai**
	107	**The Tata Power Co. Ltd., Vs. Addl. CIT, Range 2(1), I.T.A No.3382/ Mum/2010 Assessment year: 2005-06, Dated : 31st May 2011, ITAT - Mumbai** **While s. 54EC is an exemption provision which exempts capital gains and takes them outside the purview of chargeable "capital gains", s. 74 deals with the carry forward and set off of loss under the head "capital gains". The stage at which set off of carried forward long term capital loss is to be given is subsequent to the stage at which income under the head capital gains is computed and deduction u/s 54EC is to be given in the course of the latter. Accordingly, s. 54EC deduction has to be given before set-off of losses.**	**S. 54EC**	**ITAT - Mumbai**

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08-06-2011	108	**INCOME TAX OFFICER (TDS) Vs. M/s MORAJ BUILDING CONCEPTS PVT LTD, ITANo.1232/Mum/2010, Assessment Year: 2006-2007, Dated: 18th March 2011,** **Whether penalty can be levied if assessee files delayed return for lack of PAN nos of payees as they were ordinary laborers but tax was deposited.** **The findings constitute reasonable cause for the delay. Though the penalty order refers to section 206 / 206C, the default, as found by the CIT (A) and as explained is u/s 200(3). It may also be added that the penalty order seems to be in a cyclostyled form without referring even to the appropriate section. This may show non-application of mind. On the findings recorded by the CIT (A), which are not disputed by the revenue, the Court is unable to say that the assessee was not prevented by reasonable cause.**	**S. 200(3)**	**ITAT - Mumbai**
11-06-	109	**SHRAMJIVI NAGARI SAHAKARI PAT SANSTHA Vs. ADDITIONAL COMMISSIONER OF INCOME-TAX, ITA NO. 477/PN/2010, ASSTT. YEAR: 2006-07, DATE OF ORDER : 8TH JUNE 2011,** **The AO's order of attaching the bank account of the assessee even before the service of the CIT(A)'s order was wrong in view of (a) the CBDT's letter dated 25.3.2004 advising that penalties u/s 271-D & 271-E for violation of s. 269-SS & 269-T should not be indiscriminately imposed without considering s. 273-B, (b) the CCIT's direction that demand arising out of penalties imposed u/s 271-D & 271-E should be stayed in cases of co-operative credit societies, (c) UOI v/s Raja Mohammed Amir Mohammed AIR 2005 SC 4383 where concern was expressed over dangerous attitude developing amongst Executive resulting in institutional damage & (d) KEC Interntional Ltd 251 ITR 158 (Bom) where it was held that generally coercive measures may not be adopted during the period provided by the Statute to go in appeal. Accordingly, the assessee was unnecessarily subjected to harassment by the actions of the lower authorities. It is thus a fit case for imposing costs u/s 254(2B) on the Revenue to compensate the harassment caused**	**S. 254(2B)**	**ITAT – PUNE**

11-06-2011	110	**COMMISSIONER OF INCOME TAX Vs. SAFETAG INTERNATIONAL INDIA PVT. LTD., ITA NO.355 OF 2010, DATE OF DECISION : 3RD FEBRUARY 2011,** **The "short-cut method" adopted by the Tribunal is totally unsustainable. While the AO is required to record reasons, Law does not mandate the AO to suo moto supply the reasons to the assessee. It is for the assessee to demand the reasons and raise objections to the reopening which the AO is required to dispose of by passing a speaking order. As the assessee did not ask for the reasons and instead participated in the reassessment proceedings, the Tribunal could not have restored the matter back to the file of the AO and give another opportunity to the assessee to raise objections to the "reasons to believe" recorded by the AO. It was the assessee's own creation that it did not ask for the reasons or raise objection thereto. Merely because the assessee was oblivious of such a right would not mean that the Tribunal should have granted this right to the assessee, that too, at the stage when the matter was before the Tribunal and travelled much beyond the AOs jurisdiction. It is trite that what cannot be done directly, it is not allowed indirect**	**S. 148**	**DELHI HIGH COURT**

15-06-	111	**COMMISSIONER OF INCOME TAX Vs. M/S SOFTLAB PVT LTD, TAX CASE (A) NO. 95 OF 2008, DATED: APRIL 27, 2011 MADRAS HIGH COURT** **Whether when the computers are not shifted out of the assessee's premises after the sale as lease agreement was signed, it can be construed under the circumstances that the sale is not complete without transfer of ownership as per the TP Act.** **This aspect of the case can also be viewed from another angle. As per Section 54 of the T.P Act, "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Admittedly, in the present case, the ingredients spelled out in the aforesaid Section are not found. Nowhere is it brought to the notice of Court that the computers were transferred from the assessee to the purchaser, but, on the other hand, the assessee brought the computers to his premises by virtue of the lease entered into between the assessee and the purchaser. The computers are intact in the premises of the assessee, who is a seller. Therefore, the sale is not complete as defined u/s 54 of the T.P Act. The order of CIT(A) and of the Tribunal set aside.**	**Sale under Section 54 of the T.P Act.**	**HIGH COURT OF MADRAS**

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2011	112	**COMMISSIONER OF INCOME TAX, CHENNAI Vs. HARITHA SEATING SYSTEMS LTD, CHENNAI, Tax Case (Appeal) No. 106 of 2008, Dated: April 9, 2011** **Whether, the labour charges, miscellaneous income and sale of materials are part of business income for the purpose of deduction u/s 80HH - Whether the same can be decided in rectification proceedings u/s 154.** **If one examines the scheme of the Act, as it stood at the material time, one finds a clear dichotomy between Section 154 and Section 147. It is well recognized law that any erroneous assessment cannot be the subject matter for rectification u/s 154. A debatable point cannot be a reason for rectification u/s 154. Further, in order to invoke Section 154 for rectification of the mistake, the mistake sought to be rectified should be a mistake apparent on the record and must be an obvious and patent mistake and not something which could be established by long drawn process of reasoning on the point in issue on which there may be conceivably two opinions. Therefore, merely because an objection was taken out by the Revenue Audit, the officer, who succeeded the previous officer should not have undertaken the exercise of revising the order .Ther**	**S. 154 read with S. 147**	**HIGH COURT OF MADRAS**

17-06-2011	113	**DIRECTOR OF INCOME TAX Vs. MODERN CHARITABLE FOUNDATION, ITA No. 1501 of 2010, Dated: May 18, 2011** **Whether when the AO objects to the admission of the additional evidence, even if the same is to be admitted, opportunity should be granted to the AO to verify the same.** **The CIT (A) after admitting the evidence relied upon the same without any verification. No doubt, the remand report of the AO was called for and it was found that the AO did not go into to the veracity of the same and reproduced some facts from the assessment order. It was because of the reasons that the AO strongly felt that there was lapse on the part of the assessee in not producing the evidence before him when he had been given number of opportunities and therefore, he objected to the admission of the said evidence and did not do any further exercise to verify the same.** **At the same time, we also find that even the CIT (A) did not go into these documents and simply relied upon these documents and gave benefit to the AO. Therefore, in order to balance the equities, we are of the opinion that on one hand, the assessee be permitted to rely upon the additio**	**Rue 46A**	**HIGH COURT OF DELHI**

	114	**DIRECTOR OF INCOME TAX Vs. BRAHAMPUTRA CAPITAL FINANCIAL SERVICES LTD, ITA NO. 02 OF 2009, Dated: May 18, 2011** **Whether when assessee advances interest-bearing loans to a sister concern but declares the same as NPA in the balance-sheet as per RBI guidelines, even then interest can be treated as realised and the same becomes taxable income.** **Identical issue came up before this Court in a batch of appeals, the leading case being CIT Vs. M/s Vasisth Chay Vypapar Ltd. The theory of "real income" was discussed in detail. That was also a case of NBFC where loan/advance given by the said assessee had become NPA and keeping in view the guidelines of RBI interest was not treated as accrued. After taking note of various judgments on the subject, the question was answered in favour of the assessee. Following that judgment, no substantial question of law arises in these appeals.**	**S. 28**	**HIGH COURT OF DELHI**
	115	**DY CIT Vs. M/s SHAH BUILDERS & DEVELOPERS, ITA No. 3195 & 3196/Mum/2010, Assessment Year - 2005-06 and 2006-07, Dated: 6th May 2011,** **Whether the assessee is entitled to deduction u/s 80IB(10) for a residential cum commercial building which was approved by the local authority before the insertion of clause (d) in s. 80-IB(10) w.e.f. 1st April, 2005 which is prospective and not retrospective.** **The issue is covered by the decision of Brahma Associates in which it was held that Upto 31st March, 2005, deduction u/s. 80IB(10) is allowable to housing projects approved by the local authority having residential units with commercial user to the extent permitted under the DC Rules/Regulations framed by the respective local authority irrespective of the fact that the project is approved as "housing project" or 'residential plus commercial'. Clause (d) inserted in s. 80-IB(10) w.e.f. 1st April, 2005 is prospective and not retrospective.**	**S. 80IB(10)**	**ITAT – Mumbai**

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20-06-2011	116	M/s RAMALINGAM CHARITIES, SALEM Vs. THE COMMISSIONER OF INCOME TAX, SALEM, Tax Case (Appeal) Nos. 809 to 813 of 2010, Dated: 11th March 2011, Whether assessee trust is entitled to exemption u/s 11 and 12 for the amount received as corpus fund as it is not a taxable amount though it is deposited with the sister concern in violation of section 11(5), further whether where the assessee trust is not engaged to carry on the activities solely of educational institutions, it would not be entitled to exemption u/s 10(22). The tribunal found as a matter of fact that the assessee could not be considered as one existing solely for educational purpose. As the assessee has not fulfilled the conditions laid down under Section 11 of the Act, the question any benefit to be given under Section 11(5) and 12 does not arise. The tribunal found that the voluntary contributions received by the assessee Trust shall form part of the corpus of the Trust. These receipts could not be treated as income under Section 12 of the Act. The assessee is not entitled to any priority under Section 11(5) of the Act as it had been failed to satisfy the conditions laid down therein. It is for the assessee to canvass before the a	S. 11 read with S. 12 & S. 10(22)	Madras High Court
	117	COMMISSIONER OF INCOME TAX Vs A Y BROADCAST FOUNDATION, ITA No. 1486 of 2009, Dated: 22nd March 2011, Whether the activities of telecasting and broadcasting of TV and Radio programmes can also be said to be for advancement of general public utility, and thus qualify for registration as a charitable company. The assessee is a Company registered under Section 25 of the Companies Act and so much so, there is no provision for declaration of dividend to the members of the Company. What is stated in one of the object clauses is that the entire income of the Company will be utilized for the purpose for which it is formed i.e. to carry on the activities stated in the main clause, which is production of television and radio programmes for the purpose of telecasting and broadcasting through assessee's own network or through network hired by them. Generally, the activities refereed to therein i.e. production of television and radio programmes and telecasting and broadcasting of the same are commercial activities. Further the object clause provided for the	S.25 read with 2(15) of IT Act, 1961.	HIGH COURT OF KERALA

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23-06-2011	118	SINGARENI COLLIERIES COMPANY LTD. Vs. ASSISTANT COMMISSIONER OF INCOME TAX, ITA No. 249/H/2008, Assessment Year 2004-2005, Dated: 31st March 2011, Whether book profits is to be computed with reference to each assessment year and whether profits earned during the period of sickness and available for setting off under normal provisions of Income Tax are to be excluded from the ambit of book profit of non-sick years. The book profit of the assessee is to be computed with reference to each assessment year and the provisions of section 115JA(2)(vii) cannot be applied for assessment year 2000-01 after the assessee went out of the sickness; the findings of the CIT(A) are justified. It is very much clear that the period has been prescribed in the Act itself and that period is the time frame of the previous year in which the company has become a sick industrial undertaking to the end of the AY in which the company recovers from sickness or in other words, the net worth of such company becomes equal to or exceeds the accumulated losses;the purpose of introduction of section 115JA/JB is to bring certain zero tax payment companies into tax net. The legislative expedience adopted to achieve this object requires to be given effect on its own lang	S. 15JA(2)(vii)/ JB (2)(vii)	ITAT HYDERABAD

24-06-2011	119	**SAMI LABS LTD Vs. DEPUTY COMMISSIONER OF INCOME TAX, ITA No.417/Bang/2010, Assessment Year: 2004-2005, DATED: 25TH FEBRUARY 2011** **Whether expenses incurred on cultivation for adequate and steady supply of medicinal plant are allowable even though there is no agricultural activities done by an assessee directly.** **There is force in the contention of the assessee that it had not generated any agricultural income out of this venture and as a matter of fact, the assessee had not engaged any agricultural activity, but, for cultivation of coleus plants to facilitate its business and due to commercial expediency, it had incurred cultivation expenses to the tune of Rs.90.64 lakhs; in this connection, the concept of Circular No.6/2007 of the Board is very much applicable to the facts of the issue on hand;the assessee had to incur cultivation expenses to ensure adequate and steady supply of coleus plants from the farmers which were an essential input for the continuous processing in research and development activities of the assessee. Thus, these expenses incurred by the assessee for a commercial expediency and were wholly and exclusively for the purpose of its business. In essence**	**Circular No.6/2007**	**ITAT – Banglore**
	120	**Exxon Mobil Company India P. Ltd. Vs. Dy. Commissioner of Income Tax, ITA No. 8311/Mum./2010, Assessment Year : 2006-07, DATED: 10TH JUNE 2011** **The Tribunal had to consider the following transfer pricing issues: (i) Whether if two distinct services are rendered to the AE and mark-up is received for one and not for the other, the aggregate position can be considered for determining ALP, (ii) whether multi-year data can be considered, (iii) whether if loss making comparables are rejected, high profit making comparables should also be rejected? HELD by the Tribunal:** **(i) The assessee rendered three services to its AE and while it received a mark-up for "application of technical development services" and "promoting the licensing of technology", it did not receive any mark-up for "application research". The argument that the three activities should be aggregated to determine the ALP is not acceptable because the entire benefit of the "application research" was retained by the AE and not shared with the assessee and so there was no justification for not compensating the assessee;**	**Rule - 10B(4)**	**ITAT – Mumbai**

27-06-2011	121	**DY. DIRECTOR OF INCOME TAX (EXEMPTION) Vs. ADI SANKARA TRUST, ITA. NO. 96/COCH/2009 & C.O. 18/COCH/09, ASSESSMENT YEAR:2005-06, DATE: 16/06/2011,** **Whether when assessee, a charitable body, has already claimed deduction for acquisition of capital assets as application of money, the further claim of depreciation on the same assets would amount to double benefits.** **No legislation would have intended a double deduction in respect of the same business outgoing, and it was impossible to conceive otherwise, i.e., unless clearly so expressed. In other words, the intention of non double deduction is the given status, and is to be presumed, unless there is an express provision to the contrary in a particular case, and which was not so in the case(s) before it. The assessee's contention is, thus, not valid. Thus, the findings given in the case of Lissie Medical Institutions are endorsed.**	S.11	**ITAT – COCHIN**

29-06-2011	122	**Yahoo India P. Ltd. Vs. DCIT, ITA No. 506/Mum/2008, Assessment Year: 2004-05, Dated: 24th June 2011,** **The assessee, an Indian company, remitted Rs. 34 lakhs to Yahoo Holdings (Hong Kong) Ltd, a Hong Kong company, for placing banner advertisements on the web portal of Yahoo Hong Kong. The AO & CIT (A) took the view that the payment was "for the use or right to use any industrial, commercial or scientific equipment" (i.e. the server) and had the character of "royalty" under clause (iva) of Expl 2 to s. 9(1)(vi). On appeal by the assessee, HELD allowing the appeal:** **(i) The word "use" in relation to equipment occurring in clause (iva) of Expl to s. 9(1)(vi) is not to be understood in the broad sense of availing of the benefit of an equipment. The context and collocation of the two expressions "use" and "right to use" followed by the word "equipment" indicate that there must be some positive act of utilization, application or employment of equipment for the desired purpose. If an advantage was taken from sophisticated equipment installed and provided by another, it could not be said that the recipient/customer "used" the equi** **(ii) On facts, the banner advertisement hosting services did not involve use or right to use by the a**	**Clause (iva) of Expl to s. 9(1)(vi)**	**ITAT – Mumbai**

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	123	**THE COMMISSIONER OF INCOME TAX & THE JOINT COMMISSIONER OF INCOME TAX, (ASSESSMENT) Vs. M/s MANGALORE GANESH BEEDI WORKS, ITA No.1305/2006, DATED: 23rd December 2010,** **Whether when the firm is dissolved prior to the impugned AY but the returns are filed in individual capacity by the erstwhile partners in view of the directions of the court on a company petition, the sum received through a bid after dissolution is taxable as capital gains u/s 45(1) in the hands of the firm.** **It is clear from the material on record that the AO held that the income which was received by accepting the highest bid was paid to the erstwhile 9 partners and highest bid was offered by erstwhile 3 partners. It is also clear that the firm had dissolved on 6.12.1987 itself and it was not in existence thereafter and returns were being filed by the erstwhile partners in view of the direction issued by this court in the Company Petition and the AO had passed an order of protective assessment against the firm represented by its partners. The outgoing partners of the firm are liable for capital gain u/s 45(1) of the Act and not the firm. Thus, the order passed by the**	**S.45(1)**	**HIGH COURT OF KARNATAKA**