

**SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR  
THE MONTH OF MARCH & APRIL '10**

DATE	S.NO.		RELEVANT SEC. (IF ANY)	JUDGMENT PASSED BY
2-Mar-10	363	<b>CIT vs. Goyal MG Gases Ltd -DHC: ITA 829/2008 of 18/01/2010: Section 41(1) REMISSION / CESSATION OF TRADING LIABILITY:</b> Upheld: "The amount cannot be included as profit chargeable to tax under section 41(1) of the Act." applied Mahindra and Mahindra Ltd. vs. Commissioner of Income Tax, 261 ITR 501.	Section 41(1)	DHC
	364	<b>CIT vs Goetze(India) Ltd-DHC- Reopening after earlier 143(3) : change of opinion &amp; explanation on production of books etc: Applied SC ruling in Kelvinator of 18/01/2010: in its decision dated 20/01/2010:</b> Whether the production of books of accounts and other evidence amounts to the kind of disclosure contemplated in Section 147 would have to be determined in the facts and circumstances of each case. In the present case, we have seen that there was no failure on the part of the assessee to make a full and true disclosure."	Section 147	DHC
	365	<b>CIT vs. Vimal Moulders(India ) Ltd.-DHC: Income tax addition on basis of action by anti-evasion wing of Central Excise Deptt:</b> Held/upheld: " When the CESAT finally decided the issue in favour of the assessee holding that there was no such discrepancy in the stock as so initially made out by the Excise Department, we find that there is no any justification to sustain this addition in the hands of the assessee. Referred decision of Hon'ble High Court of Madras in the case of Commissioner of Income-tax vs. Vignesh Kumar Jewellers reported in 2008, 12 DTR (Mad) 293."		DHC
8-Mar-10	366	<b>Shakti Cargo Movers Pvt. Ltd. vs ACIT –Gujarat HC-</b> HELD the order passed by the Tribunal is not sustainable and hence the same is hereby quashed and set aside and the matter is restored back to the Tribunal to decide it denovo.		Gujarat HC
	367	<b>CIT vs M/s Self Saving Scheme- Mad High Court: Appeal against ITAT order u/s 254(2) limited scope:</b> Held In that view of the matter, we find no merit in this appeal and the same is rejected. No costs. We make it clear that we are not expressing any opinion as to the applicability of the Circular either prospectively or retrospectively in this appeal as it is not the issue raised in this appeal.	Section 254(2)	Mad HC

	<b>368</b>	<b>CIT vs Sri Ravindran Prabhakar- Madras High Court:</b> HELD Reopening: "It is not in dispute that after the returns were accepted by the assessing officer under Section 143(1), at that point of time, no materials were placed before the assessing officer relating to the Will in particular, on which basis 1/3rd share was claimed by the assessee. It is also an admitted fact that only thereafter notices under Section 143(2) and 142(1) were issued to the assessee for furnishing certain information, which the assessee had filed. As per Section 143(2) of the Act, after the materials which were available on the file of the assessee and if they are considered, then the question of change of opinion may arise. But that cannot be the case when a communication calling for certain particulars was issued to the assessee under Section 143(1) of the Act. In the absence of any entitlement for the assessing officer to form any opinion at the stage when the proceedings were pending under Section 143(1), the Tribunal is not right in holding that there was a change of opinion.	<b>Section 143(1)</b>	<b>Mad HC</b>
	<b>369</b>	<b>Malhotra group cases - HP High Court-</b> suppression of Hotel receipts Working etc: Held "There is absolutely nothing on record, indicating that the Tribunal has misread or misconstrued any material document or other evidence, relied upon by the parties. From the perusal of the orders of the Assessing Officer as also the order of the Tribunal, it is clear that the Assessing Officer has fairly taken into account, while working out the occupancy days, that peak season in Shimla is only during summer months of May, June and July. He has given sufficient discount for lean period of remaining nine months. Out of total 365 days of a year, only 105 days have been taken to be occupancy days. This has been done by taking into account the peak seasons and lean seasons and, therefore, it does not lie in the mouth of the assessee to say that occupancy days have been worked out without there being any material or basis."		<b>HP High Court</b>
<b>10-Mar-10</b>	<b>370</b>	<b>T.R.F. Limited vs. CIT - SC -</b> Relief giving ruling on bad-debt write off section 36(1)(VII): HELD-Mere write off required to claim bad debt allowance and no requirement to establish badness.	<b>Section 36(1)(VII)</b>	<b>Supreme Court</b>
	<b>371</b>	<b>The Apex Court in Mohd. Mohtram Farooqui, Mohalla Pirzadgan vs CIT -</b> Held According to the Tribunal, the AO has failed to apply his mind to the facts of the case. In the circumstances, according to the Tribunal, since the AO did not examine the relevant persons and since he did not find any explanation furnished by the assessee to be false, the entire penalty proceedings came to be quashed. In our view, on the facts of this case, the Tribunal should have remitted the case to the AO particularly, in view of the fact that the assessee has raised a legal contention on the applicability of Explanation-5 to Section 271(1)(c) of the Act	<b>Section 271(1)(c)</b>	<b>Apex Court</b>
<b>13-Mar-10</b>	<b>372</b>	<b>Purity Techtexile Private Limited vs ACIT- Bombay HC : Writ Jurisdiction: 148 notices Quashed within/after 4 years of 143(3): Held</b> It would be necessary to note,that mere existence of the land and building since 1988 is not a circumstance which would disentitle the assessee to the benefit of a deduction under Section 80IB of the Act, once other requirements of the provisions are fulfilled."	<b>Section 148</b>	<b>BHC</b>

	<b>373</b>	<b>Godrej Agrovet Ltd. vs. DCIT – Bombay HC: Writ Jurisdiction: 148 notice QUASHED: HELD</b> "The provisions of Section 147 of the Act empower the assessing officer to reopen an assessment or issue a notice for reassessment provided that he has reason to believe that income has escaped assessment. In a judgment of a Division Bench of this Court in German Remedies v. Deputy Commissioner of Income Tax <sup>4</sup> delivered by one of us, Shri Justice J.P. Devadhar, this Court held that though the power to reopen a concluded assessment under Section 147 is wide, the power cannot be exercised mechanically or arbitrarily..In the subsequent judgment of the Supreme Court in CIT v. Kelvinator of India Ltd. <sup>5</sup> the Supreme Court has held that wide as the power under Section 147 is after 1st April, 1989 a mere change of opinion cannot justify the reopening of an assessment and there must be tangible material before the assessing officer before he proceeds to exercise his powers under Section 147....., the assessee would be entitled to succeed in these proceedings."	<b>Section 148</b>	<b>BHC</b>
<b>16-Mar-10</b>	<b>374</b>	<b>CIT vs M/s Haryana Tourism Corporation Ltd.-P &amp; H HC:</b> Consistency on Revenue's Part: "The principle of consistency laid down by Hon'ble the Supreme Court in the case of Berger Paints India Ltd. v. CIT(2004) 266 ITR 99, CIT v.J.K.Charitable Trust (2009) ISCC 196 and C.K.Gangadharan v. CIT(2008) SCC 739 would guide us that once similar proposition has been accepted by the revenue in respect of assessment year 1997-98, then it is not open to it to challenge a similar finding and deviate from its earlier stand.."		<b>P&amp; H HC</b>
	<b>375</b>	<b>CIT vs M/s Punjab State Warehousing Corporation-P &amp; H HC:</b> Consistency: "Having heard the learned counsel we are of the considered view that once the factual position is similar in respect of the earlier assessment years, for the disputed assessment year 2003-04 no different view could be taken. We find that categorical findings of fact have been recorded in that regard which cannot be re-opened especially when there is no change of circumstance warranting a different view."		<b>P&amp; H HC</b>
	<b>376</b>	<b>CIT vs Sh. Naveen Chander- P &amp; H HC:</b> "Service of Notice Affixture: Held The Tribunal had taken the view that registered AD letter was received back unserved and thereafter service was sought to be affected by affixation which was required to be done in accordance with the procedure laid down by Order V Rule 20 of the Code. These are necessarily findings of fact coupled with the finding on law that requirement of Order V Rule 20 of the Code were not complied with. Therefore, we find that no question of law much less a substantive question of law would arise for determination of this Court. Accordingly, the appeal fails and the same is dismissed."		<b>P&amp; H HC</b>
	<b>377</b>	<b>CIT vs M/s Elbit Medical Diagnostics Ltd.- Kar. HC:</b> Classification of Payment made to Directors sitting for long time in company premises: HELD not sufficient to conclude that TDS should be made u/s 192 Alleging there is employer-employee relationship and not independent relationship (covered u/s 194J)		<b>Kar HC</b>

	<b>378</b>	<b>M/s Poonja Arcade vs ACIT- Kar. HC:</b> Reopening : Section 150/Unlimited reopening r.w Section 153: when tribunal has given sufficient indication and has made sufficient observations to enable AO to reassess the tax liability...it was correct to reopen the case u/s 150 (appeal effect etc). Other rulings gist would be sent later (are: a) Bombay High COurt on Penalty & Wealth tax & Gujarat High Court on reopening; 271D/269SS - Journal entries; 36(1)iii etc...)		<b>Kar HC</b>
<b>22-Mar-10</b>	<b>379</b>	<b>SC in NAVIN JINDAL vs ACIT: 11/01/2010: CAP GAINS : RIGHTS RENUNCIATION : LONG TERM/SHORT TERM</b> Our view is based on the judgement of this Court in the case of Miss Dhun Dadabhoy Kapadia vs. Commissioner of Income-Tax, Bombay, reported in [1967] 63 I.T.R. 651], which has taken the view that, for computing capital gains on renunciation of right to subscribe for additional shares, diminution in the value of original shares would be regarded as the cost of acquisition for such right.		<b>SC</b>
	<b>380</b>	<b>SC IN M/s SOUTHERN TECHNOLOGIES LTD. vs JCIT : 11/01/2010: NBFC's TAXATION</b> In context of "Whether the Department is entitled to treat the "Provision for NPA", which in terms of RBI Directions 1998 is debited to the P&L Account, as "income" under Section 2(24) of the Income Tax Act, 196, while computing the profits and gains of the business under Sections 28 to 43D of the IT Act.		<b>SC</b>
	<b>381</b>	<b>SC on revenue's SLP in CIT vs M/s Dharam Pal Prem Chand Ltd.: Excise Refund: Interim Order</b> The special leave petition shall stand over for four weeks in order to enable the assessee herein to file an additional affidavit indicating therein the accounting treatment which has been given by the assessee to the expenses incurred towards payment of excise duty.		<b>SC</b>
<b>24-Mar-10</b>	<b>382</b>	<b>CIT vs Jindal Equipments Leasing &amp; Consultancy Services Ltd. –DHC- SCOPE OF HIGH COURT APPEAL &amp; Section 41(1) versus Section 28(iv) Held:</b> "The Tribunal has held that the waiver/written off part of principal amount of loan by JSPL does not constitute income at the hands of the assessee. On the facts of this case and particularly having regard to the nature of business only, it will constitute capital receipt. We thus answer the question in favour of the assessee and against the Revenue.		<b>DHC</b>
	<b>383</b>	<b>Smt. Urmila Gambhir vs CIT-DHC : Search Assessment Loose Document Inferential Value:</b> "It is clear after analyzing facts/material, findings of facts are arrived at to the effect that the said sheet of paper relates to actual transactions and did not depict or reflect rough estimate of the cost of setting up of a new project in and around Gurgaon, explanation sought to be given by the assessee, which he failed to establish. In the facts and circumstances of the case, we, therefore, cannot treat it to be a dumb paper and are unable to accept this contention of the learned counsel for the assessee."		<b>DHC</b>

	<b>384</b>	<b>CIT vs Jacksons Engineers Ltd.-DHC: Section 80IA and Section 41(1) deemed income : Scope &amp; eligibility: Held</b> We are of the view that the order of the AO as upheld by the CIT (A) on this aspect is correct in law. Having regard to the aforesaid judgment of the Supreme Court, the amount was to be treated as trading receipt and therefore, it has to be added as income of the assessee. The transferring of this amount to the capital reserve account unilaterally by the assessee by means of book entry was not an appropriate step. The following observations in T.V. Sundaram Iyengar & Sons Ltd. (supra) needs to be highlighted. Once it is treated as business income, the interest question is as to whether deduction could be claimed under Section 80IA of the Act. Here again, we find that CIT (A) rightly held that it was not derived from any goods or services produced by the said unit and the it arose from the absence of ny goods having been produced and supplied by Daman Unit. Ratio of liberty would, therefore, be applied squarely.”	<b>Sec 80IA and Sec 41(1)</b>	<b>DHC</b>
	<b>385</b>	<b>CIT vs Nestor Pharmaceuticals Ltd. and Sidwal Refrigeration Ind. Ltd. vs DCIT cases: DHC-Section 80IA Begun to Manufacture: Held</b> “On facts the Tribunal decided the case against the assessee. What weighed with the Tribunal was that the assessee had not only produced the goods for trial purposes but there was, in fact, sale of one water cooler and air-conditioner in the assessment year 1998-99 relevant to the previous year/financial year 1997-98. The explanation of the assessee that this was done to file the registration under the Excise Act as well as the Sales Tax Act. This did not find favour with the ITAT. In the present case, the assessee had sold one water cooler and one air-conditioner before April, 1998. Thus, the stage of trial production had been crossed over and the assessee had come out with the final saleable product which was in fact sold as well. The quantum of commercial sale would be immaterial”.		<b>DHC</b>
<b>27-Mar-10</b>	<b>386</b>	<b>Delhi High Court in CIT vs SMC Credit Ltd.: Classification of SHARE TRANSACTIONS LOSS: HELD</b> “The Tribunal found as a fact that the loss was a result of a systematic activity in relation to shares and, therefore, it came to the conclusion that the loss claimed by the assessee should have been accepted as a business loss.”		<b>DHC</b>
	<b>387</b>	<b>Kar High Court MB Ramesh vs ITO: SECTION 54:</b> Held for purpose of availing exemption under said provision it is must that transferred asset a constituted HABITABLE RESIDENTIAL HOUSE and mere mud structure cannot be equated to residential house.	<b>Sec 54</b>	<b>Kar HC</b>
	<b>388</b>	<b>Chander Kant vs CIT -P&amp;H High Court Bank Inflated Stock: Adverse Decision</b> “In the instant case, the only explanation given by the assessee is that a wrong date of 31.1.1990 instead of 16.2.1990 was put on the aforesaid statement. This explanation can not be accepted, being not satisfactory, and the aforesaid addition was made by the Assessing Officer, which has been rightly upheld by the CIT (A) as well as the ITAT, while recording a finding of fact to the effect that the addition was made by the Assessing Officer on the basis of statement prepared and signed by the assessee for furnishing the same to the bank and on account of non-explanation of the said variation.”		<b>P &amp; H HC</b>

5-April-10	389	<b>Madras High Court: CIT vs M/s V Ramakrishna &amp; Sons Ltd: Held on Subsidiary advance written off : Held eligible business bad debt</b> “Therefore we are of the opinion that the appeal filed by the Revenue is liable to be dismissed both on facts and law. Accordingly, the question of law raised by the Revenue have been answered in the affirmative and against the Revenue and hence the appeal is dismissed.”	Sec 36(1)(vii)	Mad HC
	390	<b>Karnataka High Court: CIT vs Sri Aslam Ulla khan : Reopening Dictates-Held: Reopening on dictates of CIT as apparent from reasons recorded without application of mind is bad in law.</b>		
	391	<b>Kar High Court: H Mohan Lal Giriya vs ITO: Non furnishing of reasons</b> Held: u/s 148 on direction of appellate court: Held reopening falls down & In two proceedings (penalty and quantum), authorities on same facts are to take same view.	Sec 148	Kar HC
13-Apr-10	392	<b>Section 41(1): Remission of Liability</b> The Tribunal was not wrong, in our opinion, in coming to the conclusion that there is no remission or cessation of a trading liability. No substantial question of law arises in the appeal. The appeal is accordingly dismissed with no order as to costs.	Sec 41(1)	BHC
	393	<b>Section 271(1)(c) Concealment Penalty</b> The Tribunal was justified in coming to the conclusion that no case is made out for imposition of a penalty as the assessee has not concealed its particulars of income nor has it furnished inaccurate particulars of income. No substantial question of law, therefore, arises. The appeal is dismissed with no order as to costs.	Sec 271(1)(c)	BHC
	394	<b>COD APPROVAL BEFORE ITAT FOR APPEAL</b> We have come to the conclusion that the basis on which the appeal was dismissed by the Tribunal was erroneous, it would be only appropriate and proper to set aside the order of the Tribunal in order to facilitate an adjudication on merits. In the circumstances, the order of the Tribunal is set aside and I.T.A. No.3486/Mum/2007 is restored to the file of the Tribunal for a decision on its merits.Rule is made absolute in aforesaid terms. There shall be no order as to costs.		BHC

15-Apr-10	395	<p><b>CIT vs LEAR AUTOMOTIVE INDIA Ltd-DHC.: Reimbursements; taxability and TDS credit tc: upheld –</b></p> <p>“In view of the above, the Id. CIT(A) was right in directing the AO to give credit of the whole of the amount of Rs 51,15,000/- of TDS against the tax assessable in the year. The department is not justified in contending that the income of Rs 4,65,00,000/- corresponding to the TDS with regard to which the AO has been directed to allow credit, was not offered to tax. As noted, this amount had been received by the assessee company as tooling advance and it was paid to the vendors of M/s. Mahindra and Mahindra as a reimbursement. This being so, the amount of Rs4,65,00,000/- received by the assessee company as tooling advance and paid as reimbursement to the vendors of M/s. Mahindra and Mahindra cannot at all be termed as the assessee income.</p>		DHC
	396	<p><b>CIT vs Sunil Sethi- DHC : Deemed Dividend: Section 2(22)(e) Imperest Account Payment:</b> It has been held that the said sum of Rs 30 lakhs was given to the assessee for the purposes of making advance in respect of certain land dealings which were proposed to be entered into by the company through the assessee. Since the amount of Rs 30 lakhs which was given to the assessee was in the nature of imprest payment, the same could not be treated as deemed dividend under Section 2(22)(e) of the said Act.</p>	Sec 2(22)e	DHC
	397	<p><b>Tej Pratap Singh vs ACIT –DHC-Mass Importance Real Estate transaction Questions Admitted : CAPITAL GAINS:</b></p> <p>“Whether the date of transfer of the property in question, in view of the provisions of Income Tax Act, 1961 and particularly Section 2(47)(vi), would be:</p> <p>(i) 02.05.1987- The date of execution of the development agreement; or</p> <p>(ii) 19.02.1992- The date on which possession was handed over to the developer by the assessee; or</p> <p>(iii) 10.09.2003- The date on which the irrevocable Power of Attorney was Executed by the assessee in favour of the developer”</p>		DHC
20-Apr-10	398	<p><b>CIT vs M/s Tips Industries P. Ltd.: Search Assessment 158BC/Ch XIV-B etc: Held</b></p> <p>The Tribunal deleted the addition on the ground that the written agreement with Weston Components Limited produced by the assessee gave credence to the explanation given by the assessee that the notings represented the payment schedule and not the actual payment.. There is no material on record to suggest that over and above the agreement dated 27/4/1999, the assessee had entered into an agreement with Weston Components Ltd. or any other person which could be connected to the notings contained in the seized paper. In these circumstances, the explanation given by the assessee being reasonable and possible, the decision of the Tribunal in accepting the contention of the assessee cannot be faulted”</p>	Sec 158BC	BHC

	399	<b>CIT vs Ultimate Fashion Maker Ltd.: Section 271(1)(c) : Concealment Penalty: Held</b> "The Tribunal held that there was no mistake in the order of the Commissioner of Income Tax (Appeals) in deleting the penalty. We see no reason to interfere with the order passed by the Tribunal"	Sec 271(1)(c)	DHC
	400	<b>CIT vs Aero Traders P. Ltd: Concealment Penalty: Section 271(1)(c): Held</b> "In our view, the CIT (A) has taken right decision in deleting the penalty which is upheld." The appeal is filed against the abovementioned order of the Tribunal dated 04.12.2008. The finding arrived at by the Tribunal does not warrant interference from this Court as it is purely a finding of fact."	Sec 271(1)(c)	DHC
23-Apr-10	401	<b>CIT vs Rajesh Sharma</b> Parallel Search on Assessee and Third Party : Whether cognizance of third party – place documents under 158BD only vis a vis assessee (who is otherwise searched also) : Question admitted on Revenue's Appeal: Rajesh Sharma case: ?Whether the Income-tax Appellate Tribunal had not erred in law in holding that since the procedure of Section 158 BD of the Income-tax Act, 1961 had not been followed in respect of the diaries seized during the course of search conducted in respect of the company, the same could not form part of the block assessment insofar as the respondent / assessee was concerned ?		DHC
	402	<b>CIT vs Anupam Sweets-Section 158BD :</b> Search Assessment Third Party: Whether Satisfaction Must to be recorded by Searched Person AO: UPHELD: "The Tribunal allowed the appeal filed on behalf of the assessee by holding that no satisfaction, as required under Section 158 BD of the said Act was recorded by the Assessing Officer having jurisdiction over the person searched and consequently the proceedings initiated under Section 158 BD of the said Act were bad in law. In this case, after going through the records the Tribunal came to the conclusion that the letter dated 14th August, 2002 predicated on which the proceedings under Section 158 BD of the said Act had been initiated by the Assessing Officer of the assessee "did not show that he was satisfied that the investment had been made by the assessee"	Sec 158BD	DHC
	403	<b>CIT vs. Hari Ram Chaggan Lal &amp; Party:- Unsecured Loans: Section 68 Unexplained Cash Credit:</b> Upheld:" After taking into account the material supplied by the assessee, both the Commissioner of Income Tax (Appeals) as well as the Tribunal were satisfied with regard to the identity of the creditor as well as its creditworthiness as also with regard to the genuineness of the transaction."	Section 68	DHC
27-Apr-10	404	<b>CIT vs ACC Rio Tinto Exploration Ltd.- Tinto Section 35E Mineral Exploration Etc:</b> The provisions of Section 35 E would not be applicable to the facts and circumstances of the present case as there was no possibility of any commercial production. We agree with this reasoning."	Sec 35E	DHC

	<b>405</b>	<b>CIT vs Anil Bhalla DHC:</b> Host of Issues on Search Assessment (refer Order enclosed) P&h High Court on Addition on basis of Valuation report: Up Held: "It was also found that the revenue did not bring anything on record suggesting that expenses incurred were more than the one declared and the Valuation report alone cannot constitute basis for making additions."		<b>DHC</b>
<b>29-Apr-10</b>	<b>406</b>	<b>Noorul Islam Educational Trust v. CIT- Mad. HC: HELD ON SECTION 127 :</b> All the ingredients stated in the judgement are absent and therefore the impugned order is liable to be quashed."	<b>Sec 127</b>	<b>Mad HC</b>
	<b>407</b>	<b>CIT vs The Coonoor Tea Estates Company Ltd-Madras HC: Held on Applicability of Law:</b> "It is also a settled principle of law that where a return is filed, the law applicable would be the law as it stood on the date of filing of the return"		<b>Mad HC</b>
	<b>408</b>	<b>GUJ. HC in CIT vs M/s HIMANSHU ENGINEERING WORKS : Held Section 263: ITAT ORDER UPHELD:</b> "Tthe Tribunal has come to the conclusion that the action of the Commissioner of Income Tax fails on the touchstone of the twin principles laid down by the Apex Court namely the order is erroneous and also prejudicial to the interest of the Revenue."	<b>Sec 263</b>	<b>Guj HC</b>