SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JANUARY TO MARCH 2011

DATE	S. NO.	TOPIC	RELEVANT SEC. (IF ANY)	JUDGMENT PASSED BY
04-01-2011	1	COMMISSIONER OF INCOME-TAX, KANPUR V. SHRI RAJEEV SETH, KANPUR, INCOME TAX APPEAL NO. 150 OF 2001, DATE OF ORDER : 22.12.2010, The delay in filing the partners return on the ground that there was delay in finalization of firm's account, was held sufficient for not imposing penalty u/s 271(1)(a) of I.T. Act.	271(1)(a)	HIGH COURT OF ALLAHABAD
	2	CIT VS. KRISHI UTPADAN MANDI SAMITI.DATE, INCOME TAX APPEAL NO. (58) OF 2010, DATE OF ORDER : 2.12.2010, Under the Mandi Act, the Samitis collects mandi shulk as well as 'development cess'. They are required to send 50% of the mandi shulk and the entire development cess to the Board under sub sections (5) and (6) of section 19 of the Mandi Act. The only question is, whether the aforesaid amount is the money spent or not so as entitle the Samitis to claim allowance. Under the Mandi Act, the Board has overriding title. The amount sent to the Board is utilisation and application the money received by Samitis. They are entitled to claim exemption / allowances of the same.	19 of Mandi Act	HIGH COURT OF ALLAHABAD
06-01-2011	3	M/S LACHMAN DASS BHATIA HINGWALA (P.) LTD VERSUS ASSISTANT COMMISSIONER OF INCOME TAX, WP (C) NOS. 6460/2010, 6461/2010, 6462/2010, 6463/2010, 6464/2010 AND 6465/2010 JUDGMENT RESERVED ON: 26TH NOVEMBER, 2010, The tribunal has the power to recall the order in entirety under Section 254(2) of the Act.	254(2)	HIGH COURT OF DELHI

08-01-2011	4	JT. C. I. T., MUMBAI VS. M/S ROLTA INDIA LTD., Civil Appeal No.135 of 2011, Order Dated 07/01/2011, Held by Hon'ble Supreme Court of India that Interest under Section 234B is charged on the tax calculated on book profits under Section 115JA. Section 115JB, with which we are concerned, is a self-contained code pertaining to MAT, which imposed liability for payment of advance tax on MAT companies and, therefore, where such companies defaulted in payment of advance tax in respect of tax payable under Section 115JB, it was liable to pay interest under Sections 234B and 234C of the Act. Thus, it can be concluded that interest under Sections 234B and 234C shall be payable on failure to pay advance tax in respect of tax payable under Section 115JA/115JB.	115JB	SUPREME COURT OF INDIA
	5	Association of Leasing and Financial services companies Vs. UOI (2010) (235) CTR (521) SC Issue: As per article 366(29A) of the constitution, the hire purchase and leasing is a sale transaction which is liable to state sales tax under Entry 54, List II, it is not open to the parliament to levy service tax on same transaction under Entry 97, List I. Judgement : Service tax imposed by section 66 of the Finance Act, 1994 on the value of taxable services referred to in section 65(105)(zm), read with section 65(12) of the said Act, insofar as it relates to financial leasing services including equipment leasing and hire-purchase is within the legislative competence of the Parliament under Entry 97, List I of the Seventh Schedule to the Constitution.	66 of Finance Act,1994	SUPREME COURT OF INDIA
	6	DCIT vs. JINDAL PHOTO LIMITED, I.T.A. No. 4539/Del./2010, Held that the assessment order does not evince any such satisfaction of the AO regarding the correctness of the claim of the assessee. As such, Rule 8D of the Rules was not appropriately applied by the AO. It has not been done by the AO that any expenditure had been incurred by the assessee for earning its dividend income. Merely, an ad hoc disallowance was made. The onus was on the AO to establish any such expenditure.	14A	ITAT-DELHI

11-01-2011	**7**	**Ess Ess Engineering Vs. CCE, Chandigarh [2011] 30 STT 10** **Subject: For imposing penalty u/s 78 of Finance Act, 1994, some positive evidence of deliberate misdeclaration with intent to evade service tax is compulsory.** **Judgement : For imposition of penalty under section 78, some positive evidence of deliberate misdeclaration of value of taxable service, with intent to evade the service tax, other than mere failure to declare the full value of taxable service in returns, must be produced. In the instant case, there was no dispute that in the books of account and other financial records, all the transactions had been disclosed and those records had been produced by the assessee before the departmental auditors. In view of those circumstances, there was no justification for imposition of penalty under section 78. [Para 6]**	**78 of Finance Act,1994**	
13-01-2011	**8**	**AGR INVESTMENT LTD VS. ADDL. COMMISSIONER OF INCOME TAX AND ANOTHER, WP(C) NO.7517/2010, JUDGMENT PRONOUNCED ON: 7TH JANUARY, 2011, The petitioner is desirous of adjudication by the writ court with regard to the merits of the controversy. In fact, the petitioner requires this Court to adjudge the sufficiency of the material and to make a roving enquiry that the initiation of proceedings under Sections 147 and 148 of the Act is not tenable. The same does not come within the ambit and sweep of exercise of power under Article 226 of the Constitution of India. It is open to the assessee to participate in the re-assessment proceedings and put forth its stand and stance in detail to satisfy the assessing officer that there was no escapement of taxable income. We may hasten to clarify that any observation made in this order shall not work to the detriment of the plea put forth by the assessee during the re-assessment proceedings.**	**147**	**HIGH COURT OF DELHI**
	9	**GURUPRERNA ENTERPRISES Vs. ASSTT. CIT, I.T.A. Nos 255, 256 & 257/Mum/2010. (ITAT- MUMBAI) (BANCH-'G') held that Under Section 153A "only the assessments pending before the AO for completion shall abate and that under section 153A the issues decided in the assessment cannot be reconsidered and re adjudicate, unless there is some fresh material found during the course of search in relation to such points".**	**153A**	**ITAT-MUM**

19-01-2011	**10**	**SHRI PAWAN KUMAR PARMESHWARLAL V. ACIT, ITA NO. 530/MUM/2009, U/S 14A read with Rule 8D - Expenditure claimed in the business of share dealings cannot be correlated to the incomes earned in personal capacity that too on dividend, PPF interest and tax free interest on RBI bonds. The assessee, a stock broker & Member of BSE, earned tax-free income by way of dividend, interest on RBI bonds and PPF interest and maintaining separate books of account for the purpose of business and for these investments which are in his personal capacity. He claimed that no disallowance u/s 14A could be made as no expenditure was incurred by him to earn the tax-free income as the shares were in the demat account for a long time and dividend was automatically credited to the bank account. The AO disallowed a sum of Rs. 20,000 u/s 14A. In appeal, the CIT (A), instead of examining the issue on factual basis, directed that Rule 8D should be applied. On appeal to the Tribunal, HELD allowing the appeal.**	**14A**	**ITAT-MUM**
	11	**THE COMMISSIONER OF INCOME TAX DELHI – XI, NEW DELHI Vs. SHRI PUNEET SABHARWAL 2/6080, DEV NAGAR, NEW DELHI ITA No.758 of 2005, Decision Delivered On: 03rd December 2010, 1. Whether the Assessing Officer was right in referring the question of fair market value of the property sold by the assessee, to the District Valuation Officer in terms of Section 55A of the Income Tax Act, 1961 ("Act")? alternatively, was the Assessing Officer in terms of Section 48 read with Section 45 (5) of the Act bound to accept the value stated in the registered sale deed?. It does not arise for consideration. As per the question formulated, the property was sold by the assessee whereas, in the instant case, the properties in question were purchased by the assessee and were not sold by him. Even if we treat the same as typographical mistake, we are of the view that it would not be necessary to decide this question in view of the answer that we propose to give to question no.2. 2. Whether the Income Tax Appellate Tribunal was right in holding that notwithstanding the report of the DVO, the Revenue had to prove that the assessee had As far as the question no 2 is concerned, as already indicated above, the Assessing Office**	**55A**	**HIGH COURT OF DELHI**

21-01-2011	12	COMMISSIONER OF INCOME TAX – IV Vs. HINDUSTAN COCA COLA BEVERAGES PVT. LTD. ITA Nos.1391/2010, 1394/2010 & 1396/2010 Judgment Reserved on: 28th September, 2010 & Judgment Pronounced on: 14th January, 2011, Whether learned ITAT erred in setting aside the order of the CIT under Section 263 ignoring the fact that the goodwill generated in a business cannot be described as an "asset" so as to be entitled to depreciation under Section 32 and, therefore the depreciation on goodwill was not admissible?" It is worth noting that the meaning of business or commercial rights of similar nature has to be understood in the backdrop of Section 32(1)(ii) of the Act. Commercial rights are such rights which are obtained for effectively carrying on the business and commerce, and commerce, as is understood, is a wider term which encompasses in its fold many a facet. Studied in this background, any right which is obtained for carrying on the business with effectiveness is likely to fall or come within the sweep of meaning of intangible asset. The dictionary clause clearly stipulates that business or commercial rights should be of s	263	HIGH COURT OF DELHI
22-01-2011	13	COMMISSIONER OF INCOME-TAX, Vs. M/S TAJ INTERNATIONAL JEWELLERS, INCOME TAX APPEAL NO. 985 OF 2010, DATE OF ORDER : 13.12.2010, If there is a clear nexus between the interest earned on the FDRs and the interest paid on loans utilized for purchase of FDRs and the intimate connection between the receipt and payment of interest stand established. It is not in dispute that the entire money was borrowed with the sole purpose of converting the same into FDRs and that was actually done as well. The interest paid had to be allowed under the provisions of Section 57 (iii) of the Act.	57	HIGH COURT OF DELHI
	14	COMMISSIONER OF INCOME TAX-II, Vs. FRIENDS CLEARING AGENCY (P) LTD., INCOME TAX APPEAL NO. 3 of 1999, DATE OF DECISION : 04.01.2011, The mere fact that the Bank had not shown the accrual of interest in its books of accounts would not make the liability contingent. Insofar as the Bank was concerned, it had laid a claim by filing a suit. There is nothing to show that the Bank had not claimed interest for all the three periods i.e. pre-suit, pendente lite and future interest.	43B	HIGH COURT OF DELHI

25-01-2011	15	DIRECTOR OF INCOME TAX, NEW DELHI Vs. LG CABLE LTD., ITA No. 703/2009, Date of Decision : December 24, 2010 Whether the Income Tax Appellate Tribunal is justified in not holding that the contract in question is not a composite one and, therefore, the assessee is not liable to pay tax in India in respect of offshore service? Yes.	9(1)	HIGH COURT OF DELHI
	16	COMMISSIONER OF INCOME TAX, DELHI-XI Vs. M/S. AERO CLUB, ITA No. 216/2006 Date of Decision : December 24, 2010, The answer is our opinion must be an emphatic no. In our opinion, the CIT(A) and the Income Tax Appellate Tribunal rightly set aside the "best judgment" assessment of the Assessing Officer on the ground that the Assessing Officer had "not brought on record any comparable case wherein the net profit declared by a tax payer in the similar business was higher than the one declared by the assessee." We also concur with the findings of the Income Tax Appellate Tribunal that the profit margins of a tax payer as declared by him, could be varied and disturbed only if the profit margins in the case of other assesses engaged in similar business are higher. In the instant case, the assessee has brought on record evidence that in the case of a company having similar business, the declared profits were in fact lower than the profits declared by the assessee. The Assessing Officer in his Remand Report was also unable to comment on the comparable case of M/s. Bata India Limited and Aero Traders relied upon by the assess	144	HIGH COURT OF DELHI
29-01-2011	17	COMMISSIONER OF INCOME TAX Vs. SAMTEL COLOR LIMITED, ITA NO. 660/2008, DATE OF DECISION: JANUARY 17, 2011 During the assessment proceedings, the Assessing Officer observed that the assessee had taken deposits from public, which was to the tune of Rs.261.41 lakhs. According to the Assessing Officer, however, credit-worthiness in respect of 18 depositors could not be established by the Assessee and, therefore, deposits given by those 18 depositors, which were to the tune of Rs.18.00 lakhs, were added in the income of the assessee under Section 68 of the Income Tax Act. Thus, on the facts of this case, we are of the opinion that even in respect of these eight depositors, the assessee had discharged the onus. The order of CIT(Appeals) in deleting the entire amount was perfectly justified and could not have been interfered with by the ITAT qua those eight depositors.	68	HIGH COURT OF DELHI

	18	COMMISSIONER OF INCOME TAX, Vs. ORIENT CERAMICS & INDS. LTD., INCOME TAX APPEAL NO. 65 AND 66 OF 2011, DATE OF ORDER : 20.01.2011, It is held that mere book entries are not decisive of any income. The question is whether a receipt of money is taxable or not, whether certain deductions from that receipt are permissible in law or not, the question has to be decided according to the principles of law and not in accordance with the book entries for the accounting practice since the accounting practice cannot override the provisions of the Act.	37	HIGH COURT OF DELHI
31-1-2011	19	M/S ADOBE SYSTEMS INDIA PVT. LTD. Vs. ADDITIONAL COMMISSIONER OF INCOME TAX, I.T.A. NO. 5043/DEL/2010 FOR A.Y. 2006-07 Held that Transfer Pricing: Super-normal profit cos must be excluded from comparables. The assessee, engaged in providing software development services reported an OP/Cost Margin of 14.96%. The TPO worked out the average of arithmetic mean of ALP (OP/OC) of 42 comparables at 24.91% and directed that an adjustment of Rs. 10.40 crores be made. In its objections to the DRP, the assessee claimed that the comparables included three companies which were “super-normal profit making” and that these should be excluded. It was claimed that if the said companies were excluded, the arithmetic mean of OP/OC of the comparables was 17.15% which was within the +/- 5% range permitted by s.92(C)(2).Further held that, It is quite contrary to the mandate of section 144C of the IT Act, where the assessee has made voluminous submissions including paper books before the DRP who has passed a very cursory and laconic order without going into the details of the submissions.	92(C)(2)	ITAT-DELHI
	20	COMMISSIONER OF INCOME TAX, TRICHUR vs. THE CATHOLIC SYRIAN BANK LTD., TRICHUR, ITA. Nos. 467, 720, 730, 843, 479, 1324 & 1045 of 2009 & 40 of 2010 DATE OF ORDER: 21.10.2010 IN THE AT ERNAKULAM Held that There is no precise formula for proportionate disallowance of administrative expenditure. No disallowance is called for, for proportionate administrative cost attributable to earning of tax free income until Rule 8D came into force. The proportionate disallowance under Section 14A should be limited to only interest liability and not overheads or administrative expenditure; which should be considered for disallowance under Rule 8D from 2007-2008 onwards.	14A	HIGH COURT OF KERALA

	21	**SHRI BALWANT RAI WADHWA VS. ITO, ITAT, I.T.A NO. 4806/DEL/10** **Non-supply of 'Reasons for reopening' u/s 148 within the time renders the reopening of assessment u/s 147 void. The AO served notice u/s 148 within the limitation period. However, the recorded reasons were supplied after the limitation period. The assessee argued before the Tribunal that in the light of the observations in Haryana Acrylic vs. CIT 308 ITR 38 (Del), if the reasons for reopening were not served on the assessee within 6 years i.e. within the limitation period, the reopening was void. The Tribunal allowed the appeal of the assessee**	**148**	**ITAT-DELHI**
02-02-2011	22	**CIT Vs. SPLENDER CONSTRUCTION, ITA No.1977 OF 2010, JUDGMENT RESERVED ON 09.12.2010, The Assessing Officer allowed the change but then was right in holding that the period of holding the asset was reckoned from the date when it was converted as investment from stock in trade and not from the date when the land was purchased. Therefore, the gain was to be treated as short term capital gain. The assessee, under the garb "long term capital gain" wanted to pay lesser tax. It had thus clearly furnished inaccurate particulars of income.**	**271(1)(C.)**	**HIGH COURT OF DELHI**
	23	**CIT Vs. BHARTI TELEVENTURE LIMITED, ITA NO. 1337, 1339 AND 1340 OF 2010, DATE OF ORDER : 03.01.2011,** **The facts of the case clearly indicate that the disallowance has been made without establishing nexus between borrowed funds and specific advances to subsidiaries. The appellant company had adequate non-interest bearing funds by way of Share Capital and Reserves. In the result the disallowance cannot be sustained as prima facie the advances were made out of appellant"s own capital.**	**36(1)(iii)**	**HIGH COURT OF DELHI**
	24	**CCE Vs. Ace Auto Comp. Ltd. Civil Appeal No. 3051 of 2003** **Fact:** **Ace Auto Comp. was using the 'TATA' brand along with its own brand 'ACE' and was claiming SSI exemption under Central Excise Act.** **Judgement :'The brand of 'TATA ACE' creates a connection between 'TATA Company' and the assessee. Hence, the assessee shall not be allowed to avail the benefit of the SSI exemption.**	**SSI Notification Nos. 1/93 and 16/97 of CENTRAL EXCISE ACT**	**SUPREME COURT OF INDIA**

04-02-2011	25	CIT Vs. INTERRA SOFTWARE INDIA PVT. LTD. , ITA NO. 507 OF 2008, DATE OF ORDER : 24.12.2010, The provisions of Section 10A are only applicable in case of an industrial undertaking manufacturing or producing articles as approved in the sub Section set up in a free trade zone/electronic hardware technology park/software technology park after certain due dates. The export from Japan branch of the assessee is clearly not covered u/s 10A (2) of the Act. there is no doubt as per Explanation 3 to Section 10A as noted above the profits and gains derived from outside development of computer software including services of development of software outside India is deemed to be profit and gains derived from the export of computers software outside India w.e.f. 1-4-2001. There is no doubt the Japan Branch has been opened by the appellant as per the agreement with the Japanese company to also provide onside development service with approval of RBI and also noted by Noida Special Economic Zone that the appellant unit located at NSEZ has opened a new trading branch at Tokyo. Therefore that profit derived by th	10A	HIGH COURT OF DELHI
	26	CIT Vs. CHILD EDUCATION SOCIETY, ITA NO. 1966 OF 2010, DATE OF ORDER : 24.12.2010, The Tribunal while allowing the appeal, returned the finding that there was no violation or irregularities committed by the assessee and, therefore, the assessee was entitled to exemption under Section 11 of the Act. The precise submission is that even when certain persons had supplied the goods or rendered services, the same was treated as donation and certificate under Section 80G were issued which would clearly demonstrate that School was issuing these Certificates indiscriminately.	11	HIGH COURT OF DELHI
	27	CIT Vs. MAHINDRA FINLEASE PVT. LTD., ITA NO. 981 OF 2008, DATE OF PRONOUNCED : 31.01.2011, “Whether the protective assessment can be framed in the proceedings under Section 158BC/158BD?” It is observed that similar issue relating to protective assessment made u/s 158BD had arisen for consideration before the Madras Bench of ITAT in the case of L. Saroja Vs. ACIT – 76 ITD 344 wherein it was held by the Tribunal that protective assessment qua the person sought to be covered u/s 158BD cannot be sustained.. Since no contrary decision of Tribunal or any High Court on this issue has been brought to our notice by the learned DR, we respectfully follow the aforesaid decisions of the Tribunal in the case of L. Saroja (supra) and Smt. Farzana Farooq Desai (supra) and uphold the impugned orders of the learned CIT (A) deleting the additions made by the AO u/s 68 on protective basis in the assessments completed u/s 158BC/158BD.”	68	HIGH COURT OF DELHI

07-02-2011	28	CIT Vs. OASIS HOSPITALITIES PVT. LTD., INCOME TAX APPEAL NO. 2093 OF 2010, DATE OF PRONOUNCED : 31.01.2011, The issue relates to the addition made by the AO under Section 68 of the Income Tax Act on account of unexplained share application money. The plain language of Section 68 of the Act suggests that when the assessee is to give satisfactory explanation, burden of proof is on the assessee to provide nature and source of those receipts. There cannot be two opinions on the aspect that the pernicious practice of conversion of unaccounted money through the masquerade or channel of investment in the share capital of a company must be firmly excoriated by the Revenue. Equally, where the preponderance of evidence indicates absence of culpability and complexity of the assessed it should not be harassed by the Revenue"s insistence that it should prove the negative. In the case of a public issue, the Company concerned cannot be expected to know every detail pertaining to the identity as well as financial worth of each of its subscribers. But if the AO fails to unearth any wrong or illegal dealings, he cannot obdurately adhere to his sus	68	HIGH COURT OF DELHI
	29	ASIA SATELLITE TELECOMMUNICATION CO. LTD. Vs. DIRECTOR OF INCOME TAX , ITA NO. 131 OF 2003, DATE OF PRONOUNCED : 31.01.2011, Whether any income could be deemed to have accrued to the appellant in India within the meaning of Section 9 of the Act. He held that although it could be said that there was some kind of territorial nexus of the beam which was downlinked from the appellant's satellite with India, the proprietary rights in the nature of copyright, etc. in the down linked beam did not belong to the appellant but belonged to the T.V. channels.	9	HIGH COURT OF DELHI
	30	CIT VS. CITICORP MARUTI FINANCE LIMITED, ITA NO. 1712 OF 2010, DATE OF ORDER : 09.11.2010, In the instant case the assessee claimed loss on sale of repossessed assets u/s 36(1) (vii) r/w Section 36 (2) of the Act. The claim was covered by Section 36 (1) (vii) read with Section 36 (2) of the Act. He was also of the view that it was not a case of trading loss under Section 28 of the Act. The assessee is entitled to the deduction of the amount of „bad debts written off" by it, in the year, when it became irrecoverable, since the repossessed assets were sold and was not a case of mere revaluation of the assets leased and were taken merely possession thereof.	36(1) read with 36(2)	HIGH COURT OF DELHI

09-02-2011	**31**	**CIT VS. M/S KELVINATOR OF INDIA LTD., ITA NO. 39 OF 1999, JUDGMENT DELIVERED ON : 19.01.2011,** **The assessment order records that "other income" have been shown by the assessee in Schedule „K" to the balance sheet of the respondent company. The question, inter alia, which was examined was arising from the deposit made by the respondent under section 32 AB of the Income Tax Act, 1961 the respondent/assessee was granted relief and in terms thereof, the deduction was recomputed against profit and gains of business as arrived at under Schedule „VI" of Companies Act, 1956 for the purpose of section 32AB of the said Act. in every case where there is loss of revenue, as a consequence of order passed by the Assessing Officer, can it be treated as prejudicial to interest of revenue. Consequently, if the Assessing Officer has adopted one of the courses permissible in law, which resulted in loss of revenue or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue unless the view taken by the Assessing Officer is unsustainable in law.**	**32AB**	**HIGH COURT OF DELHI**
11-02-2011	**32**	**CIT VS. NARESH KUMAR AGGARWALA, ITA NO. 225 OF 2004, DATE OF DELIVERY OF JUDGEMENT : 07.02.2011,** **Learned counsel for the respondent-assessee submitted before us that the Tribunal rightly deleted the addition made by the AO since no addition could be made under Section 69 of the Act merely on presumption basis. He submitted that no documentary evidence was brought on record by the Department to show that the assessee had passed more money outside the account books with regard to the purchase of the property in question. He urged that no presumption could have been drawn under Section 132(4A) of the Act against the assessee in the absence of any documentary proof in this regard. He also submitted that the letter.**	**69**	**HIGH COURT OF DELHI**
	33	**M/S FRICK INDIA LTD. VS. COMMISSIONER OF INCOME TAX, INCOME TAX APPEAL NO. 168 OF 1993, DATE OF DECISION : 01.09.2010,** **The assessee in the return filed by it for the assessment year 1982- 83 had claimed weighted deduction under Section 35B of the Income Tax Act on the ground that it had paid certain commission to the agents outside India. This was denied by the Assessing Officer on the ground that no relationship between the assessee and those persons to whom the commission was paid was established.**	**35B**	**HIGH COURT OF DELHI**

14-02-2011	34	ST. LAWRENCE EDUCATIONAL SOCIEITY (REGD.) & ANOTHER Vs. CIT, W.P.(C) 1254/2010, Date of Order : 04.02.2011 The opinion expressed by the respondent that the educational institutions seeking exemption should not generate any quantitative surplus is legally untenable and incorrect. The Chief Commissioner has erred in assuming that for exemption there should not be any surplus, otherwise the institution society exists for profit and not charity i.e. education in the present case. In the result, we allow the writ petition and set aside the order passed by the competent authority and remit the matter to the said authority for fresh adjudication in accordance with law in the light of the aforesaid decisions.	10(23C)(vi)	HIGH COURT OF DELHI
	35	M/S MAGTRON EARTH MOVERS, MRUTYUNJAYA NAGAR, RANEBENNUR, HAVERI DIST Vs. ITO, WARD-1, HAVERI, ITA NO.818/BANG/2010, ASSESSMENT YEAR: 2006-2007, ITAT-IT - Sec 32 - Whether, for depreciation purpose, JCB earth-moving machines can be equated with motor lorry or plant and machinery - It is plant and machinery, entitled to only 15% rate	32	ITAT-BANGLORE
16-02-2011	36	CYBER MEDIA INDIA VS. CIT-1 & ANR., ITA NO. 67 OF 1999, DATE OF DELIVERY OF JUDGEMENT : 07.02.2011, The appellant is aggrieved by the impugned judgment in as much as the authorities below have disallowed the deduction claimed by the assessee towards advertisement income accrued but not received in cash. The assessee sought deduction of the aforementioned income predicated on the fact that the method of accounting regularly followed by it, for income tax purposes, was “cash” basis. On consideration of the material on record, what emerges is that: (i) the assessee had been following hybrid system of accounting till the preceding assessment year i.e., Assessment Year 1988-1989; (ii). the assessee had been accounting for income received from advertisement on cash basis, which admittedly had been accepted by the revenue in the preceding years ending with Assessment Year 1988-1989; and (iii). the Tribunal has returned a finding of fact, in favour of the assessee, that the assessing officers observation that because expenses against advertisement and publicity had been recorded on accrual basis while,	145	HIGH COURT OF DELHI

10-02-2011	37	CIT VS. M/S ESCORTS LIMITED, ITA NO. 14 OF 1999, DATE OF DELIVERY OF JUDGEMENT : 01.02.2011, The CIT by virtue of this order disallowed the claim of the assessee in respect of the capital loss on transactions relating to purchase and sale of units issued by the Unit Trust of India, which were ubiquitously referred to at the relevant point in time as Unit-64. Besides this, by the same order, the CIT also directed the Assessing Officer to verify whether any expenditure had been incurred in regard to the impugned transactions towards brokerage and administrative expenses, and that if it were so found, the expenditure incurred was required to be adjusted against the dividend income earned in respect of the said units, for the purpose of computation of reliefs claimed by the assessee under section 80 M of the Act. It was contended that the genesis of the notice issued by the CIT under section 263 of the Act was the enquiry made by the Assessing Officer with regard to the purchase and sale of the units by the assessee in the subsequent assessment year i.e., Assessment Year 1993-1994; which resulted in the Assessing Officer disallowing the claim of short term c	80M	HIGH COURT OF DELHI
	38	JOINT C.I.T., MUMBAI VS. M/S ROLTA INDIA LTD., CIVIL APPEAL NO. 135 OF 2011, Even s. 115J / 115JA Book Profit Cos liable for advance-tax & s. 234B interest S. 115J/115JA are special provisions. For purposes of advance tax the evaluation of current income and the determination of the assessed income had to be made in terms of the statutory scheme comprising s. 115J/115JA. Hence, levying of interest was inescapable. The assessee was bound to pay advance tax under the scheme of the Act. S. 234B is clear that it applies to all companies. There is no exclusion of s. 115J/115JA in the levy of interest u/s 234B (Kwality Biscuits Ltd vs. CIT 243 ITR 519 (Kar) (SLP dismissed in 284 ITR 434) considered).	234B	SUPREME COURT OF INDIA

21-02-2011	39	THE CENTRAL INDIA ELECTRIC SUPPLY CO. LTD. Vs. ITO, COMPANY CIRCLE – X, NEW DELHI & ANR., ITA NO. 17/1999, DATE OF DECISION 28.01.2011 (1) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that re-assessment proceedings under Section 147(a) read with Section 148 of the Income-tax Act, 1961 had been rightly initiated against the assessee? (2) Whether the Tribunal was right in holding that valid approval had been accorded by the Central Board of Direct Taxes under Section 151(i) of the Income-tax Act for re-opening of the assessment of the assessee? For all the aforesaid reasons, we find that the impugned order of the Tribunal is not sustainable and is accordingly set aside. The notice issued under Section 148 of the IT Act is quashed and all proceedings pursuant thereto are also accordingly quashed. Consequently, both the questions are answered in favour of the appellant / assessee and against the respondent / Department.	Section 147(a) read with Section 148	HIGH COURT OF DELHI
	40	CIT VS. M/S INTERNATIONAL RESEARCH PARK LAB. LTD., ITA NO. 8/2001 & 16/2001, HIGH COURT OF DELHI, JUDGEMENT DELIVERED ON : 06.01.2010 (1) Whether the Tribunal is right in holding that for determining the quantum of deduction in respect of profits derived from export u/s 80HHC, the entire profits computed under the head “profits and gains of business or profession” including the income of the nature of commission is to be taken into account? (2) Whether the Tribunal is right in holding that commission received by the assessee on assignment of export orders to another party in India will form part of profits eligible for deduction u/s 80HHC? It is not necessary for us to examine these questions in detail in as much as the same are covered in favour of the assessee and against the revenue in view of the Supreme Court decisions Consequently, both the questions referred to us in these references are decided against the revenue and in favour of the assessee, following the Supreme Court decision referred to above.	80HHC	HIGH COURT OF DELHI

23-02-2011	**41**	**M/S HYDERABAD CHEMICALS SUPPLIES LTD. VS. THE ACIT, HYDERABAD, ITA NO. 352/HYD/2005 (i) That s. 80-IA deduction has to be computed after deduction of the notional brought forward losses and depreciation of business even though they have been allowed set off against other income in earlier years is concluded by the ITAT Special Bench judgement in ACIT vs. Gold Mine Shares & Finance (P) Ltd 113 ITD 209 (SB) (Ahd) against the assessee;** **(ii) As regards the High Court judgements in Mewar Oil & General Mills 271 ITR 311 (Raj) (not followed by the Special Bench) & Velayudhaswamy Spinning Mills vs. ACIT 38 DTR 57 (Mad) (delivered after referring to the Special Bench), though a judgement of a non-jurisdictional High Court prevails over a judgement of the Special Bench, the former cannot be followed, even though it is the only High Court judgement on the point, if "rendered without having been informed about certain statutory provisions that are directly relevant".**	**80-IA**	**ITAT-HYDERABAD**
25-02-2011	**42**	**Electronics Corporation of India Ltd vs. Union of India & Ors (SC – 5 Judge Bench), CIVIL APPEAL NO. 1883 OF 2011, Arising out of S.L.P. (C) No. 2538 of 2009. February 17, 2011** **The idea behind setting up of the … "Committee on Disputes" (CoD) was to ensure that resources of the State are not frittered away in inter se litigations between entities of the State, which could be best resolved, by an empowered CoD … Whilst the principle and the object behind the aforestated Orders is unexceptionable and laudatory, experience has shown that despite best efforts of the CoD, the mechanism has not achieved the results for which it was constituted and has in fact led to delays in litigation …. On same set of facts, clearance is given in one case and refused in the other.** **This has led a PSU to institute a SLP in this Court on the ground of discrimination. We need not multiply such illustrations. The mechanism was set up with a laudatory object. However, the mechanism has led to delay in filing of civil appeals causing loss of revenue. For example, in many cases of exemptions, the Industry Department gives exem**	**Section 4 of Central Excise Act, 1944**	**SUPREME COURT OF INDIA**

	43	CIT VS. INFO VERGIX TECHNOLOGIES LTD. , ITA 613/2008, JUDGEMENT DELIVERED ON 12.01.2010 The assessee had shown expenditure as deferred revenue expenditure in its books. However, it had claimed it as revenue expenditure in its return. The AO had disallowed the same and the CIT(A) had confirmed the disallowance. The ITAT has allowed the deduction on the ground that, although the said sum had been shown differently in the books, the same was allowable as per law. The said sum comprised of two components, expenditure incurred between the period 01.04.2000 to 30.05.2000 (pre-commencement period) it was clearly incurred prior to the date of commencement of any business activity of the assessee and, accordingly, the same was in the nature of pre-operative expenses.	37	HIGH COURT - DELHI
01-03-2011	44	LOGITRONICS PVT. LTD Vs CIT & ANR., ITA NO.1623 OF 2010 & CIT Vs. JUBILANT SECURITIES PVT. LTD., ITA NO. 503 OF 2010, ORDER PRONOUNCED ON: FEBRUARY 18, 2014, It was held that where capital assets are acquired by obtaining a loan, and subsequently, the loan amount is waived by the other party, the principal amount of loan waived by the other party cannot be brought to tax under Section 28(iv) of the Act or under Section 41(1) of the Act	28(iv)	HIGH COURT OF DELHI
05-03-2011	45	M/S CLEAR PLUS INDIA PVT. LTD., VS. DY. C.I.T., I.T.A. NO.3944/D/2010, PRONOUNCED IN OPEN COURT ON 11.02.2011. The TPO adopted the transactional net margin method and directed that an adjustment be made by adopting the mean profit of comparables. This was confirmed by the DRP. On appeal, HELD - U/s 92C read with Rule 10B, the most appropriate method has to be applied for determination of arm's length price. In principle, the CUP method (the traditional transaction method) is preferable to the other methods because all other things being equal, the CUP and traditional transactional methods lead to more reliable results vis-a-vis the results obtained by applying transaction profit method (UCB India 121 ITD 131 and Serdia Pharmaceuticals followed);	92C read with Rule 10B	ITAT-DELHI

08-03-2011	46	APPEAL NO. 7796 OF 1997, DATE OF ORDER : March 1, 2011 HELD by the Constitution Bench: (i) Parliament is constitutionally restricted from enacting legislation with respect to extra-territorial aspects or causes that do not have, nor expected to have any, direct or indirect, tangible or intangible impact(s) on or effect(s) in or consequences for: (a) the territory of India, or any part of India; or (b) the interests of, welfare of, well-being of, or security of inhabitants of India, and Indians. In all other respects, Parliament may enact legislation with extra-territorial effect. This power is not subject to tests of "sufficiency" or "significance" or in any other manner requiring a pre-determined degree of strength. All that is required is that the connection to India be real or expected to be real, and not illusory or fanciful. (ii) However, Parliament does not have the power to legislate "for" any territory, other than the territory of India or any part of it. Parliament can only make laws for India and any law which has no impact on or nexus with India would be ultra-vires.	9(1)	SUPREME COURT OF INDIA
	47	CIT VS PACKWORTH UDYOG LTD, ITA.NO. 930 OF 2009, DATE OF ORDER : 30/11/2010, Though the assessee was not entitled to any deduction u/s 80HHC under the normal provisions of the Act owing to losses, it claimed that in computing the book profits u/s 115JA/115JB, deduction u/s 80HHC ought to be computed having regard to the profits as per the P&L A/c as held in GTN Textiles 248 ITR 372 (Ker).	80HHC	HIGH COURT OF KERALA
'10-03	48	HONDA SIEL POWER PRODUCTS LIMITED VERSUS THE DEPUTY COMMISSIONER OF INCOME-TAX AND ANOTHER, WRIT PETITION (CIVIL) NO. 9036 OF 2007, DATE OF DECISION : 14TH FEBRUARY, 2011 (i) The Proviso to s. 14A bars reassessment but not original assessment on the basis of the retrospective amendment. Though the ROI was filed before s. 14A was enacted, the assessment order was passed subsequently. The AO ought to have applied s. 14A and his failure has resulted in escapement of income. The object and purpose of the Proviso is to ensure that the retrospective amendment is not made as a tool to reopen past cases which have attained finality; (ii) The assessee has "accepted and admitted" that it has not given details with regard to proportionate expenses relatable to tax free income and argued that it was not required to disclose the same as s. 14A was not in the statute book when the ROI was filed. However, the details ought to have been given at the stage of the assessment proceedings & the failure to do so is a "failure to disclose material facts". It is the duty of the assessee to bring to the notice of the AO particular items in the books of account o	14A	HIGH COURT OF DELHI

10-03-2011	49	ASSTT. COMMISSIONER OF INCOME-TAX, NAISHADH V. VACHHARAJANI, I.T.A. NO. 6429/MUM/2009, DATE OF ORDER : 25th February, 2011 HELD dismissing the appeal: (i) As regards the LTCG, the shares were held for several years and so the assessee has acted as investor and not as a trader and so the gains are assessable as LTCG; (ii) As regards the STCG, the view of the CIT(A) had to be upheld because; (a) there was no intra-day trading, (b) most of the shares were held for a period of 2 to 5 months, (c) In the preceding AY, the AO did not assess the STCG as business income and on the principles of consistency; a different view cannot be taken on the same facts.	S.45 vis a vis S. 28	ITAT-MUMBAI
12-03-2011	50	M/S. VARDAN BUILDCON Vs. ASSTT. COMMISSIONER OF INCOME TAX, DATE OF DECISION: 24.02.2011, ITA NOS. 429/2011, 430/2011 AND 431/2011 Whether the purchaser was a trader and the purchase of the commodity and its resale were allied to his usual trade or business or incidental to it - the assessee"s firms had its objects of dealing in lands and thus it was the usual trade and business of the assessee; (ii) the nature and quantity of the commodity purchased and resold, the assessee has purchased several number of plots and spent expenditure for development and sold the same in a consolidated manner. The assessee has no other business or any act; (iii) any act subsequent to the purchase to improve the quality of the commodity purchased and thereby making it a more ready resalable – After purchases the lands were developed/fenced and consolidated. Assessee"s had purchased the nearby plots, consolidate them and spent considerable amount which the assessee"s claim to be on fencing job to secure the same. Thus, the activity considerably improved the quality of land & prospect of its purchase by a builder for development activity; (iv) any act prior	S. 28	HIGH COURT OF DELHI

	51	**CIT Vs. WHIRPOOL OF INDIA LTD., HIGH COURT OF DELHI, ITA 1154 OF 2009, JUDGEMENT DELIVERED ON 24.01.2011** **(A) Whether the ITAT was correct in law in deleting the addition of Rs. 3,09,42,798/- made by the Assessing Officer on account of disallowance of provision for warranty claims?** **The assessee is required to make provision for all known liabilities, though to be discharged at the subsequent year. If on earlier occasion the provision was made but if later on the provision so made is found short of the liability provided for, the assessee is entitled to review such provision from time to time and make provision for the additional liability or write back the liability if provision is no more required. It is settled law that even though there is some difficulty in estimation, it would not convert the accrued liability into an additional one or a contingent liability.** **(B) Whether the ITAT was correct in law in deleting the addition of Rs. 70,66,000/- mad**	**S.40(a)(ia)**	**HIGH COURT OF DELHI**
16-03-2011	**52**	**CIT VS. DELHI RACE CLUB LTD, ITA NO. 128/2008, DATE OF ORDER : 03.03.2011** **The Department filed an appeal in the year 2008 where the tax effect was less than Rs. 10 lakhs. The question arose whether in view of Instruction No. 3/2011 Dated 9-2-2011 the appeal was maintainable. HELD dismissing the appeal:** **It was held that the CBDT Circular imposing limits on the filing of appeals by the department applied to pending appeals, Instruction No. 3/2011 Dated 9-2-2011 also applied to pending appeals and as the tax effect was less than Rs. 10 lakhs, the appeal was not maintainable.**	**Instruction No. 3/2011 Dated 9-2-2011**	**HIGH COURT OF DELHI**
	53	**ABN AMRO BANK, N.V. Vs CIT, I.T.A. NO. 458 OF 2005,** **(i) As regards deductibility of the interest in the hands of the PE, though a branch and the HO are the "same person" in general law, Articles 5 & 7 of the DTAA provide that the PE shall be assessable as a separate entity. Under Article 7(3)(b) payment of interest by a bank's PE to its HO is allowed as a deduction. The result is that the interest paid by the PE to the HO is deductible in computing the PE's profits (Betts Hartley Huett 116 ITR 425 (Cal) distinguished);** **(ii) As regards taxability in the hands of the HO & obligation for TDS u/s 195, in accordance with the principles of apportionment of profits between the PE & the HO as laid down in Hyundai Heavy Industries 291 ITR 482 (SC) & Morgan Stanley 162 TM 165 (SC), only the PE is to be taken as the assessee and not the HO. As the interest was not chargeable to tax in the hands of the HO, the PE was under no obligation to deduct tax u/s 195 and consequently no disallowance u/s 40(a)(i) can be made in the hands of the branch**	**40(a)(i)**	**CALCUTTA HIGH COURT**

18-03-2011	54	**CIT *Vs.* JAYPEE DSC VENTURES LTD., ITA 357/2010, DATE OF DECISION: 11TH MARCH 2011** **The tribunal opined that the interest earned by the assessee on the FDRs has intrinsic and inseggregable nexus with the work undertaken and, therefore, the interest earned by the assessee is capital in nature and shall go towards adjustment against the project expenditure and the same cannot be assessed as income from other sources. Being of this view, the tribunal allowed the appeal preferred by the assessee. The Hon'ble Delhi high court assented to the view expressed by the Income Tax Appellate Tribunal and dismissed the departmental appeal.**	**S.56**	**HIGH COURT OF DELHI**
	55	**CIT Vs. SHRI NARENDER ANAND, ITA NO. 82 OF 1999, DATE OF DECISION: 24.02.2011** **"Whether on the facts and circumstances of the case, the Tribunal was justified in holding that where time for filing return is extended in terms of proviso to Section 139 (1) it automatically means extension of the due date for the purpose of Section 43B of the Income Tax Act?"** **The order of the ITAT records that if the amount of sales tax stood paid within the extended period as granted by the AO, then the amount could not be disallowed for making addition. Consequently, the ITAT directed the AO to verify the payment of outstanding sales tax, and if that stood paid by the assessee within the extended period of time for filing return, not to make the addition on this account to the total income of the assessee. The Hon'ble Delhi high court assented to the view expressed by the Income Tax Appellate Tribunal and dismissed the departmental appeal.**	**43B**	**HIGH COURT OF DELHI**

22-03-2011	56	**M/S PINE PACKAGING PVT LTD Vs. ITO, ITA NO.4084 (DEL) OF 2010, DATE OF DECISION : JANUARY 14, 2011** **There is no dispute that the assessee is eligible for deduction under section 80-IC. The only dispute is whether the standing charges have been derived from any business referred to in sub section (2) of section 80-IC; in the case of assessee, the standing charges have been received as idle charges including return on capital. They represent the reimbursement of certain expenses which cannot be treated as derived from the manufacturing of or production of a article or thing. Therefore, the standing charges which are received by the assessee for compensation on account of idle charges cannot be treated as income derived from industrial undertaking from manufacture or production of a article or thing on simple reason that they are reimbursement of expenses, which the assessee has to incur being a captive unit of HLL and could not manufacture the products for others.**	**80-IC**	**ITAT (DELHI)**
	57	**DEPUTY COMMISSIONER OF INCOME TAX CIRCLE-11(1), NEW DELHI Vs M/s ENERGY INFRASTRUCTURE INDIA LTD, ITA Nos.2337 & 4337/Del/2010, Dated: January 7, 2011** **On the facts and circumstances of the case, the decisions of Supreme Court in the cases of CIT vs. Karnataka Power Corporation, CIT vs. Bokaro Steel Ltd. and CIT vs. Bongaigaon Refinery and Petrochemicals Ltd. are applicable to the present case; in the case of Bokaro Steel Ltd. it was a case of Government company which during the period of construction of the plant, had advanced the moneys to the contractors on which it was earning interest, received rent from quarters let out to employees, received hire charges on plant let out to contractors and received royalty on stones removed from the assessee's lands. The Supreme Court considered all these activities to be instricably connected with the construction activity and accordingly held that interest received, rent received, hire charges and royalty, etc. would be reduced from the cost of the assets and it would not be treated as income**	**S.56**	**ITAT (DELHI)**

26-03-2011	58	CIT Vs. M/S. INDIA SEA FOODS, THOPPUMPADY, KOCHI, ITA. No. 128 of 2010, Dated : 17/01/2011, The fact that the Assessing Officer initiated rectification proceedings under Section 154 does not mean that he should stick to the same only and proceed to issue orders as proposed. If the assessee convinces the officer that rectification is not permissible, the Assessing Officer is absolutely free to give up the same and see whether there is any other recourse open to him to achieve the purpose i.e. to bring to tax escaped income. There was nothing wrong in the Assessing Officer giving up rectification proceedings, though initiated by him based on reply filed by the assessee and then initiating an income escaping assessment by issuing notice under Section 148 within the statutory period. Since there is no challenge on merits of the case i.e. with regard to withdrawal of excessive relief granted under Section 80HHC, the reassessment completed under Section 147 will stand restored.	154	HIGH COURT OF KERALA
	59	M/S MOHAN & CO. Vs. DCIT,ITA No. 1069/Mum/2010, Dated : December 22, 2010 The AO could not had made disallowance of the entire expenditure and the disallowance had to be restricted to only to the extent the expenditure was excessive or unreasonable. Regarding payment for salary and conveyance expenses submitted the debit note but the AO had not made any enquiry and therefore, disallowance is deleted. Regarding reimbursement of motor car expenses, the assessee failed to furnish necessary details hence adhoc disallowance @ 25% is made u/s 40A(3) in respect of the increase in the expenses to the sister concern in comparision to the preceding year, the Assessee had not produced any evidence to substantiate the increase in payment of charges in this A.Y. compared to the earlier year. The submissions made are very general without any supportive evidence. The order of the CIT (A) was set aside and an opportunity was given to the assessee to submit evidence to substantiate the submissions	40(A)(2)(b)	ITAT-MUMBAI

29-03-2011	60	**EVEREADY INDUSTRIES INDIA LTD Vs CIT, ITA No.27 of 2003, Date of Order: 04/03/2011,** **The dividend received by the assessee was tax free under Section 10(33). It appears that the assessee has utilized the said provision of the statute and as such, the same cannot be called as an abuse of the process of law. As pointed out by the Supreme Court, even if the transaction was a pre-planned one, there was nothing to impeach the genuineness of the transaction; as regards the observation of O. Chinnappa Reddy, J. in the case of McDowell & Co. Ltd. Vs. CTO, it was pointed out by the Supreme Court in the later decision of the Supreme Court in the case of Union of India Vs. Azadi Bachao Andolan, that a citizen is free to carry on his business within the four corners of the law and that mere tax planning, without any motive to evade taxes through colourable devices is not frowned upon. Thus, in a case arising before April 1, 2002, the losses pertaining to exempted income cannot be disallowed; the assessee is entitled to claim loss on the aforesaid transaction by answering the two questions framed by the Division Bench in fa**	**10(33)**	**HIGH COURT OF CALCUTTA**
	61	**S K SAIFUDDIN Vs ITO, ITA No.964 (Kol) of 2009, Date of Order: February 17, 2011,** **Sec. 40(a)(ia) requires that unless tax is deducted according to section 194C on payment to contractors or sub-contractors, which includes supplier of labourers for carrying out any work, it will attract disallowance of expenditure. The assessee had specifically stated before the lower authorities that there was no contract between the assessee and the labour-heads. Whereas it is the case of the Revenue that the assessee's case falls u/s. 194C(2) of the Act. Thus, revenue claims that there was existence of sub-contract and these labour heads are sub-contractors. It is also not clear from the records whether there is any contract existed on principal-to-principal basis between assessee and labour heads. Keeping in view the totality of the facts and circumstances of the case and the submissions of the parties, it is deemed proper to restore the issue of determination of existence of any contract between the assessee and the labour-heads to the file of the AO.**	**194C**	**ITAT – Kolkata**

31-03-2011	**62**	**CIT VS M/S SAI METAL WORKS, ITA NO.125 OF 2004 DATED: MARCH 10, 2011, Section 40A(3) applies to the proceedings to assessment under Chapter XIV-B. As regards the said provision not being taken into account where assessment is by estimation basis on GP rate. If the estimated income impliedly takes into consideration the expenditure incurred, the said principle may apply. If the expenditures which are legally not permissible has been taken into account, the same can certainly be disallowed n the present case, the assessee has not been able to cover its case under Rule 6DD. In the circumstances, the AO was justified in disallowing expenditures incurred in contravention of Section 40A(3).**	**40A(3)**	**HIGH COURT OF PUNJAB AND HARYANA**