

**SECTION 2
DEFINITIONS**

SECTION 2(1A) - AGRICULTURAL INCOME

Agricultural income - Additional evidence filed - Assessing Officer rejected claim of assessee for exemption of agricultural income on ground that assessee had failed to produce relevant documents to justify agricultural income. Assessee had filed additional evidence in form of surveyor's report to prove that agricultural activities were carried out.

Held - Matter was to be remanded back for de novo consideration of issue.

Madan Mohan Mishra v. Income Tax Officer, Ward-8(2)(4) - [2024] 160 taxmann.com 42 (Mumbai - Trib.)

SECTION 2(22) - DEEMED DIVIDEND

Loans and advances – Recipient not a shareholder - Assessing Officer had made an addition treating loan advanced by assessee's group company (IG3) to assessee as deemed dividend under section 2(22)(e). Neither assessee nor its shareholders were shareholders of IG3 as on date of advancing of loans and there were no common registered and beneficial shareholders between IG3 and assessee on date of advancing of loans.

Held - Commissioner (Appeals) had rightly deleted impugned additions.

Deputy Commissioner of Income-tax, Central Circle 2(2) v. Mukunda Land Developers (P.) Ltd. - [2024] 160 taxmann.com 291 (Chennai - Trib.)

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**SECTION 4
CHARGE OF INCOME TAX**

Grant - Electricity grants received by assessee from State Government under Industrial Policy, 2005 for setting up a project for manufacturing of paints.

Held – Grant received for setting up a project was capital in nature.

Asian Paints Ltd. v. Asstt. Commissioner of Income-tax - [2024] 160 taxmann.com 356 (Mumbai -Trib.)

Subsidy - Sales tax subsidy – Capital or revenue - Assessee availed exemption from payment of tax under exemption certificate issued under section 4A of U.P. Trade Tax Act, 1948 on turnover of sales and claimed amount representing tax exemption component as capital receipt. Section 4A clearly indicated that exemption from tax on turnover of sales was not a subsidy granted by Government.

Held - Aforesaid amount of tax component was a revenue receipt in hands of assessee.

Commissioner of Income-tax v. Birla Corporation Ltd. - [2024] 159 taxmann.com 632(Calcutta)

Subsidy – Setting up industry - Capital or revenue - Assessee received Subsidy from State Government under Package Scheme of Incentives, 2007 to encourage setting up of industries in less developed areas of State and not for purpose of running business more profitably.

Held – Subsidy received for setting up of industries was capital in nature.

Asian Paints Ltd. v. Asstt. Commissioner of Income-tax - [2024] 160 taxmann.com 356 (Mumbai - Trib.)

Asian Paints Ltd. v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 402 (Mumbai -Trib.)

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SECTION 9
INCOME DEEMED TO ACCRUE OR ARISE IN INDIA

Business Profits – Access to data base - Right to tax - Assessee, a tax resident of USA, received subscription for providing access to data base pertaining to legal and law related information.
Held – Subscription received was in nature of business profits which could not be brought to tax in India in absence of PE.

Commissioner of Income-tax, (IT)-3 v. Relx Inc - [2024] 160 taxmann.com 109 (Delhi)

Capital gains – Transfer of Shares/units - Assessee, a Mauritius based company had made investment in shares of Indian companies and claimed exemption under article 13(4) of India-Mauritius DTAA and Assessing Officer denied said exemption on ground that assessee was a shell/conduit company. Shares on sale of which assessee derived capital gain were acquired prior to 1-4-2017.

Held - Assessee being holder of TRC was beneficial owner of capital gain and, hence, was entitled to benefits under article 13(4) of DTAA.

Norwest Venture Partners X-Mauritius v. Deputy Commissioner of Income-tax, Circle IT - [2024] 160 taxmann.com 632 (Delhi - Trib.)

Elimination of double taxation - Assessee, a Abu Dhabi Investment company, had shown its valid registration as category of foreign portfolio investor obtained with SEBI and held a valid residency certificate and given particulars of income, there was no reason to doubt that it was not authority as mentioned in Article 24.

Held - Assessee was eligible to benefit provided under Article 24.

Abu Dhabi Investment Authority v. Deputy Commissioner of Income-tax (IT), Circle-1(1)(1) - [2024] 160 taxmann.com 104 (Mumbai - Trib.)

Permanent Establishment - Agency PE - Assessee, a UK based company had entered into off-shore contract with an Indian company, in its independent capacity. No evidence was brought on record to show that Indian Associate was employed by any 'act' of assessee to represent assessee independently while dealing with PGCIL.

Held - There was no force in finding of Assessing Officer that AE of assessee in India was actively involved in soliciting business for assessee and thus, it constituted dependent agent PE of assessee. Assessee did not have an agency PE.

UK Grid Solutions Ltd. v. Deputy Commissioner of Income-tax (IT)-3(1)(1) - [2024] 160 taxmann.com 694 (Delhi - Trib.)

Permanent Establishment - Construction PE - Assessee, a UK based company was not engaged in any construction project in India and its revenues were outcome of off shores supplies and services rendered off shore.

Held – There was no question of constitution of Construction PE as per article 5(2) of DTAA.

UK Grid Solutions Ltd. v. Deputy Commissioner of Income-tax (IT)-3(1)(1) - [2024] 160 taxmann.com 694 (Delhi - Trib.)

Permanent establishment - Fixed place PE - Indian company only rendered support services which enable assessee in turn to render services to their clients abroad.

Held - This outsourcing of work to India would not give rise to a fixed place PE.

Commissioner of Income-tax, (IT)-1 v. ESPN Star Sports Mauritius S.N. CET Compagnie - [2024] 160 taxmann.com 389 (Delhi)

Permanent Establishment - Fixed PE, Place of business - Assessee, engaged in business of dredging, reclamation and other maritime activities, had hired dredging from foreign companies on time charter basis from MD, British Virgin Islands. Operational staff and captain worked under supervision and control of assessee company in India and, moreover, decision on whether and how much to dredge was completely within domain of assessee company in India.

Held - Commissioner (Appeals) had correctly held that non-resident company did not have a business connection in India.

Jaisu Shipping Co. (P.) Ltd. v. Additional Director of Income-tax (IT) - [2024] 160 taxmann.com 128 (Rajkot - Trib.)

Permanent Establishment – Others - Assessee a U.K. based company was awarded a contract for offshore manufacture and supply of equipment and parts to ONGC and Assessing Officer held that consortium member was working on behalf of assessee-company which formed PE of assessee and entire receipts of assessee were taxable in India under section 44BB.

Held - Burden of proving existence of PE had not been discharged by revenue, section 44BB would not apply.

Baker Hughes Energy Technology UK Ltd. v. Assistant Commissioner of Income-tax, Circle-1(1)(2), IT - [2024] 160 taxmann.com 500 (Delhi - Trib.)

Permanent establishment – Others - Indian subsidiary did not perform any additional functions that would lead to creation of a PE in India. Remuneration for same would ideally be NIL.

Held - Profits already offered to taxes by Indian entity should be considered to be at arm's length and no further attribution is required.

AB Sciex (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle, IT 1(1)(1) - [2024] 160 taxmann.com 593 (Delhi -Trib.)

Permanent Establishment - Service PE – Days for which service provided - Assessee, a Singapore based company, provided legal advisory services to Indian clients and it was found that services had been furnished by assessee only for 44 days in India after excluding vacation period, business development days and common days.

Held - Assessee did not constitute service PE in India as per India-Singapore DTAA during relevant assessment year.

Clifford Chance PTE Ltd. v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 424 (Delhi - Trib.)

Income from employment - Salary payments outside India - Assessee was a resident of India, however he had exercised employment and received remuneration in US.

Held - Salary income of assessee was taxable in USA and not in India.

Somnath Duttgupta v. Assistant Commissioner of Income-tax, Circle-2(1) - [2024] 160 taxmann.com 576 (Kolkata -Trib.)

Resident - Place of control and management of company - Treaty benefit under India UK DTAA were denied to assessee, a UK company, by holding that assessee could not be treated as tax resident of UK. Assessee had enclosed a certificate issued by HM Revenue and Customs, UK in accordance with Article 4 of treaty between India-UK DTAA.

Held - Assessee was duly entitled for treaty benefits.

UK Grid Solutions Ltd. v. Deputy Commissioner of Income-tax (IT)-3(1)(1) - [2024] 160 taxmann.com 694 (Delhi - Trib.)

Royalty or fees for technical services - Computer software - Assessee, a US based company, received consideration for sale of software licences to its distributor in India who in turn sold same to end-users. Assessee only permitted end-users to use a copyrighted article and there was no sale of copyright per se in said article.

Held - Payment received by assessee from said distributor on sale of software to end-users could not be termed as 'royalty' under relevant DTAA.

Deputy Commissioner of Income-tax (International Taxation) v. Mathworks Inc. - [2024] 159 taxmann.com 1478 (Bangalore - Trib.)

Royalty or fees for technical services - Information technology support services - Assessee, a US based company, received consideration towards maintenance services in relation to sale of software licences in India. Said maintenance services were inextricably linked to supply of software licence.

Held – As supply of software itself was not taxable as 'royalty', amount received by assessee on account of said maintenance services could not be termed as 'fees for included services'.

Deputy Commissioner of Income-tax (International Taxation) v. Mathworks Inc. - [2024] 159 taxmann.com 1478 (Bangalore - Trib.)

Royalty or fees for technical services - make available - Assessee, a USA based firm, was engaged in business of cloud and hosting services, disaster recovery services, etc. and received certain amount from its Indian customer. Said services did not make available any technical knowledge, skill, know-how or process to assessee's Indian customer.

Held - Same could not be taxed in India as per provisions of Indo-US tax treaty (Article 12).

Sungard Availability Services LP v. Income Tax Officer (IT), Ward-4 - [2024] 159 taxmann.com 778 (Pune -Trib.)

Royalty or fees for technical services - Make available - Assessee entered into a Global Operations Fees Arrangement with GETDIL and services provided were primarily managerial in nature and also passed arm's length tests and did not involve any technical knowledge etc. to satisfy make available clause contained in article 13(4)(c) of India-UK DTAA.

Held - Authorities below had fallen in error in taxing global operation fee received from GETDIL as FTS under provisions of Act and India-UK DTAA.

UK Grid Solutions Ltd. v. Deputy Commissioner of Income-tax (IT)-3(1)(1) - [2024] 160 taxmann.com 694 (Delhi - Trib.)

Royalty or fees for technical services – No explanation offered - Assessee, a foundation, engaged in running an educational school, made annual payments under various heads like evaluation fees, authorization fees, fees etc. to various foreign educational institutions and had not offered any explanation regarding basis for raising invoice on assessee and also on what basis discount was offered to assessee, even after affording several opportunities to assessee both during course of assessment as well as appellate proceedings.

Held - Matter was to be remanded to Assessing Officer to understand basis on which lump sum fee was charged by overseas entities from assessee and also basis for allowing/affording discount to assessee.

International Education & Research Foundation v. Deputy Commissioner of Income Tax (IT)-1 - [2024] 160 taxmann.com 454 (Ahmedabad - Trib.)

Royalty or fees for technical services: Where assessee had entered into Cost Contribution Agreement (CCA) with SIPCL for provision of General Business Support Services (BSS) and AAR ruled that nature of General BSS was of consultancy services and thus it was technical service within meaning of article 13. List of services in General BSS showed that it related to managerial services and not involving anything of a technical nature.

Held - Services availed could not be said to be technical service and article 13 was wholly inapplicable.

Shell India Markets (P.) Ltd. v. Union of India - [2024] 160 taxmann.com 175 (Bombay)

Royalty or fees for technical services - Rate of tax - Assessee, a resident of Canada, entered into a joint venture (JV) with an Indian entity for execution of Hydroelectric Project and received technical know-how fee and financial commitment fee from JV.

Held - Assessee was entitled to get benefit of tax rate provided under Indo-Canada DTAA.

Deputy Commissioner of Income-tax (IT), Circle-1(3)(1) v. Foundation Co. of Canada Ltd. - [2024] 160taxmann.com 526 (Delhi - Trib.)

Royalty or fees for technical services – Software - Assessee, a Chinese company, supplied software to an Indian company for granting of licence to incorporate software into head unit which is supplied from outside India and get fitted into cars and claimed it as non-taxable under India-China DTAA. Assessee had only supplied a standard/off the shelf software to Indian company and had not transferred copyright/right to use copyright of software.

Held - Impugned receipts would not fall within scope of Article 12(3) of India-China DTAA to be taxed as royalty income.

SAIC Motor Overseas Intelligent Mobility Technology Co. Ltd. v. Assistant Commissioner of Income-tax, (IT) - [2024] 159 taxmann.com 779 (Delhi - Trib.)

Royalty or fees for technical services – Software – Income inadvertently offered to tax - Assessee, a UK based company, could not be prevented from raising a claim that receipts from sale of software was not taxable in India merely because said income was wrongly offered as royalty income in ROI and was not revised.

Held – Claim of assessee could not be denied.

App Dynamics International Ltd. v. ACIT (International Taxation) - [2024] 160 taxmann.com 312 (Delhi - Trib.)

Royalty or fees for technical services - Software services - Assessee, an Irish company, entered into a reseller agreement with an Indian company for sale of its products in India and made application under section 197 to receive payments thereunder with Nil or low TDS. Technical assistance and training provided by assessee to its Indian counterpart did not bear characteristics of conferral of specialised or exclusive technical service.

Held - Order denying Nil or lower TDS certificate to assessee was to be quashed and set aside.
SFDC Ireland Ltd. v. Commissioner of Income-tax - [2024] 160 taxmann.com 328 (Delhi)

Royalty or fees for technical services - Time Charter Hire Charges - Assessee, engaged in business of dredging, reclamation and other maritime activities, had hired dredging from foreign companies on time charter basis.

Held - Payments made by assessee would qualify as royalty for use of equipment under section 9(1)(vi) and, therefore, assessee was under an obligation to deduct tax at source as royalty payments at time of making payments to non-resident payee.

Jaisu Shipping Co. (P.) Ltd. v. Additional Director of Income-tax (IT) - [2024] 160 taxmann.com 128 (Rajkot - Trib.)

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**SECTION 10
INCOMES NOT INCLUDED IN TOTAL INCOME**

SECTION 10 (10D) – SUM RECEIVED UNDER INSURANCE POLICY

Surrender value - Sums was received on surrender of life insurance policy.

Held – Surrender value would be eligible for exemption u/s 10(10D) and it could not be taxed under section 28(vi).

Mihir Parikh v. Assistant Commissioner of Income-tax, Circle-61(1) - [2024] 160 taxmann.com 141 (Delhi - Trib.)

SECTION 10(23C) – EDUCATIONAL INSTITUTIONS

Exemption of income – Generation of surplus – Assessee earned surplus from operation from year to year.

Held - Mere generation of surplus from year to year could not be a basis for rejection of application under section 10(23C) (vi) if it was used for education purposes.

Chandigarh Manav Vikas Trust v. Chief Commissioner of Income-tax - [2024] 160 taxmann.com 403 (Rajasthan)

SECTION 10(26) – MEMBERS OF SCHEDULED TRIBES RESIDENT IN NORTH EASTERN STATES

Exemption - In case of Partnership firm – Partnership firm claimed exemption u/s 10(26).

Held - A partnership firm being a separate assessable 'person' under Income Tax Act, would not be entitled to same exemption under section 10(26) as any or all of individual partners would be in their individual capacity.

Hotel Centre Point v. Income-tax Officer, Ward-1 - [2024] 160 taxmann.com 604 (Guwahati - Trib.)

SECTION 10(38) – LONG-TERM CAPITAL GAIN ON TRANSFER OF EQUITY SHARES UNITS

Assessee provided necessary evidences - Burden of proof - High Court had held that where assessee provided all details of purchase and sales of shares to AO along with contract notes for purchase and sale, demat account and bank statement and, furthermore no incriminating materials were found during survey conducted in premises of assessee, AO could not deny claim under section 10(38) merely by relying on statements of accommodation entry providers which were recorded much before date of survey.

Held - SLP against order of High Court was dismissed.

Principal Commissioner of Income-tax v. Dipansu Mohapatra - [2024] 160 taxmann.com 289 (SC)

Claim through revised return – Right of cross examination - AO rejected assessee's revised return claiming exemption under section 10(38) for long-term capital gains and also made

additions under sections 68 and 69 based on statements from 'entry operators', without providing the cross examination.

Held - It was assessee's right to correct mistakes by filing revised return and moreover, assessee was denied opportunity to cross examine entry providers, order of AO was to be set aside.

Principal Commissioner of Income-tax-1 v. Kuntala Mohapatra - [2024] 160 taxmann.com 567 (Orissa)

Sale of shares – Capital gain thereon - Exemption u/s 10(38) - High Court had held that where AO rejected assessee's revised return claiming exemption under section 10(38) for long-term capital gains and also made additions under sections 68 and 69 based on statements from 'entry operators', since it was assessee's right to correct mistakes by filing revised return and moreover, assessee was denied opportunity to cross examine entry providers, order of AO was to be set aside.

Held - SLP dismissed against order of High Court

Principal Commissioner of Income-tax. v. Kuntala Mohapatra - [2024] 160 taxmann.com 608 (SC)

Share transactions - Assessee purchased shares at Rs. 5 per share and sold same at Rs. 420 per share and claimed exemption under section 10(38) in respect of long-term capital gain arose from such sale. Assessee had paid amount for purchase of shares through cheque and certificate of said shares was also taken on record and Assessing Officer had not established that assessee was involved in price manipulation of said scrip.

Held - Long-term capital gain could not be treated as unexplained money under section 69A and assessee had rightly claimed exemption under section 10(38).

Puneet Singh R. Bhadoria v. Income-tax Officer - [2024] 159 taxmann.com 1486 (Ahmedabad - Trib.)

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SECTION 11
INCOME FROM PROPERTY HELD FOR CHARITABLE OR RELIGIOUS PURPOSES

Receipts of Charitable entity – Alleged commercial activity – Reassessment - AO issued reopening notice on ground that assessee-charitable trust was engaged in commercial activity. There was not even an allegation that uncontrolled discretion or authority to open or maintain commercial institution was in object of assessee and there was not even a finding to that effect.

Held - Merely because there were certain receipts received by assessee while conducting its charitable activities, those receipts could not be treated to be income from commercial activities and thus, reopening could not be sustained.

Fine Arts Society v. Deputy Director of Income-tax (Exemptions) 1-2 - [2024] 159 taxmann.com 776 (Bombay)

Utilisation of Grant – Received from government - Sub section 15 - Assessee had been consistently treating grants received from Government of India and utilised by implementing agencies as income and grants released to State Government, as and when utilization certificates were received as expenditure, in compliance with accounting procedure defined in GFR 230(5) of Government of India and directions of IFD and had spent 85 per cent of such income towards its objects.

Held - Balance income of assessee was exempt under section 11.

Deputy Commissioner of Income-tax, Exemptions Circle v. National Fisheries Development Board - [2024] 160 taxmann.com 5 (Hyderabad - Trib.)

SECTION 12A
CONDITIONS FOR APPLICABILITY OF SECTIONS 11 AND 12

Delay in filing audit report - Condonation of delay - Assessee-society claimed exemption under section 11 but assessee had filed audit report in Form No. 10B after expiry of time allowed under section 139(1). Assessee did not cumulatively satisfy set of conditions specified in Para 4(i) of Circular No. 10, dated 22-5-2019 and also had not filed any application for condonation of delay as provided in Para 4(ii) of said circular.

Held - There remained no occasion for condonation of delay in filing Form No. 10B and thus exemption under section 11 was rightly declined.

Dr. MurliManohar Dubey Charitable Society v. Income-tax Officer - [2024] 159 taxmann.com633 (Raipur - Trib.)

**SECTION 12AB
PROCEDURE FOR FRESH REGISTRATION**

Cancellation of registration - Violation was committed by assessee trust in assessment year 2021-22

Held – Violation in A Y 2021-22, could not be basis of cancelling section 12AB registration for assessment year 2022-23 to assessment year 2026-27, as each year is to be considered independently.

Islamic Academy of Education v. Principal Commissioner of Income-tax, (Central), Bengaluru - [2024]160 taxmann.com 217 (Bangalore - Trib.)

Scope of provision - Assessee-trust was already registered under section 12AA and it due to insertion of clause (ac) to section 12A (1) with effect from 1-4-2021 filed application in Form No. 10A well within due date for fresh registration under section 12AB.

Held - Assessee was entitled for grant of registration from assessment year 2021-22.

Cheyar Virutcham Educational Trust v. Assistant Commissioner of Income-tax (H. Qrs) (Exemptions) - [2024] 159 taxmann.com 635 (Chennai - Trib.)

Scope of provisions - Objects of assessee-trust were primarily charitable rather than favouring any specific religious community.

Held - CIT(E) was not justified in denying registration under section 12A, by invoking section 13(1)(b) as said provisions would be attracted only at time of assessment and not at time of grant of registration.

Jamiatul Banaat Tankaria v. Commissioner of Income-tax (Exemption) - [2024] 160 taxmann.com 358 (Ahmedabad - Trib.)

**SECTION 13
SECTION 11 NOT TO APPLY IN CERTAIN CASES**

Deduction of expenditure - Sub-section (2)(c) - Assessee-society claimed deduction of salary paid to a doctor (trustee of assessee-society) and Assessing Officer disallowed claim on ground that assessee had failed to substantiate its claim and added amount to its income by invoking provisions of section 13(2)(c) read with section 13(3). Assessing Officer in immediately preceding assessment year had accepted assessee's claim for deduction of salary paid to aforesaid doctor.

Held - Matter was to be restored to him to verify authenticity of assessee's claim.

Dr. Murli Manohar Dubey Charitable Society v. Income-tax Officer - [2024] 159 taxmann.com 633(Raipur - Trib.)

SECTION 13A
SPECIAL PROVISIONS RELATING TO INCOMES OF POLITICAL PARTIES

Electoral Bonds - SBI was directed to submit details of Electoral Bonds purchased by contributors and redeemed by political parties between 12-4-2019 till 15-2-2024 and SBI filed a miscellaneous application seeking extension of time until 30-6-2024.

Held - Details of Electoral Bonds which had been directed to be disclosed were readily available, SBI was not justified in seeking extension of time and was to be directed to disclose details by close of business hours on 12-3-2024.

State Bank of India v. Association for Democratic Reforms - [2024] 160 taxmann.com 327 (SC)

Exemption - Tribunal rejected stay application preferred by assessee a political party seeking stay on recovery of demand outstanding. Order could not have been interfered with as continued adjournments were sought by assessee on different dates and it had turned down its offer for appeal itself being put down for final hearing, however, an amount of Rs. 65.94 crores i.e. 48 per cent of outstanding demand was recovered in interregnum by encashing bank drafts.

Held – Part recovery of outstanding demand by encashment of bank drafts would merit consideration by Tribunal in case assessee chooses to move a fresh application for stay.

Indian National Congress v. Deputy Commissioner of Income-tax, Central 19 - [2024] 160 taxmann.com 359 (Delhi)

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SECTION 14A
EXPENDITURE INCURRED IN RELATION TO INCOME NOT INCLUDIBLE IN TOTAL INCOME

Interest - Assessee-bank earned interest income from NABARD bonds which was claimed as exempt under section 10(15) and Assessing Officer disallowed certain amount under section 14A read with rule 8D. During years under consideration available tax-free funds were more than investment made on which exempt income was earned.

Held - Disallowance made under section 14A read with rule 8D was to be deleted.

Bank of Nova Scotia v. Assistant Director of Income-tax (IT)-3(2) - [2024] 160 taxmann.com 10 (Mumbai - Trib.)

Short disallowance made – Reassessment - Assessing Officer issued on assessee a notice seeking to reopen assessment on ground that there was short disallowance while computing disallowance under section 14A and without disposing of objection raised by assessee directly passed assessment order. Assessing officer did not dispose of objections raised by assessee by passing a speaking order.

Held - Impugned assessment order deserved to be set aside.

Lucas TVS Ltd. v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 228 (Madras)

Recording of satisfaction - Disallowance made by Assessing Officer under section 14A read with rule 8D without recording any satisfaction regarding claim of assessee in respect of expenditure incurred in relation to exempt income.

Held – In absence of recording of satisfaction by AO, disallowance made was to be deleted.

Asian Paints Ltd. v. Asstt. Commissioner of Income-tax - [2024] 160 taxmann.com 356 (Mumbai - Trib.)

Quantification of disallowance - Rule 8D – Earlier year's order - Tribunal remanded matter back to Assessing Officer for disallowance of expenses under section 14A. Tribunal did not consider decision of a coordinate Bench in assessee's own case for earlier assessment year where in on similar facts of disallowance under section 14A, Tribunal had allowed interest expenditure to assessee and only referred to and relied upon submissions made by assessee to decide issue for disallowance under section 14A.

Held - Impugned order of Tribunal was to be set aside and matter was to be remanded to Tribunal to decide issue afresh.

Gujarat State Fertilizers and Chemicals Ltd. v. Deputy Commissioner of Income-tax, Central Circle 1(1)(1) - [2024] 160 taxmann.com 649 (Gujarat)

SECTION 22
INCOME FROM HOUSE PROPERTY

Rental income - Assessee, engaged in IT services, earned rental income from a property which was not its business asset but an investment.

Held - Such rental income would be chargeable to tax under head 'Income from house property'.

Effective Teleservices (P.) Ltd. v. Principal Commissioner of Income-tax-3 - [2024] 160 taxmann.com 689 (Ahmedabad - Trib.)

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SECTION 28
PROFITS AND GAINS OF BUSINESS OR PROFESSION

Business loss - Assessing Officer disallowed claim of business loss made by assessee only on basis that assessee had passed general entries to book losses. Tribunal noticed vouchers relating to transactions filed by assessee and also that transactions were by way of account payee cheque only.

Held - Disallowance made by assessee was not justified.

CCIT / Principal Commissioner of Income-tax, Central-2 v. Bhupendra Champaklal Delal - [2024] 160 taxmann.com 560 (Bombay)

Expenses incurred to keep status alive - Assessee filed return declaring loss, which was in shape of payment of audit fee etc.

Held - Assessee had incurred only minimum expenditure for keeping its status as intact, said expenses deserved to be allowed.

SPMLHCIL JV v. Income-tax Officer - [2024] 160 taxmann.com 231 (Kolkata - Trib.)

Loss on share transactions - AO holding that assessee had mixed up all transactions of sale and purchase of shares in 'Patwat Sheet', a summary of all purchases and corresponding sales transacted in a month, disallowed losses on these transactions of sale and purchase of shares. AO had not made any addition of identical nature in earlier years or subsequent year and operation of assessee were identical in nature for all years.

Held - Disallowance of loss was to be deleted during year as well.

CCIT/Principal Commissioner of Income-tax, Central-2 v. Bhupendra Champaklal Delal - 2024] 160 taxmann.com 560 (Bombay)

Loss on share transactions - AO made addition on account of a disparity/mismatch in stock of shares as statement of closing stock did not tally with list of closing stock of shares as furnished by assessee. Assessee had pointed out that AO had treated 'renunciation of right' as 'sale of shares' and that Tribunal held that there was nothing on record to contradict explanation of assessee and as per market mechanism, assessee was entitled to sell his rights in favour of another person instead of applying for shares.

Held - Addition was rightly deleted by Tribunal.

CCIT /Principal Commissioner of Income-tax, Central-2 v. Bhupendra Champaklal Delal - [2024] 160 taxmann.com 560 (Bombay)

MCX transactions - Assessee was a dealer in gold and silver bullion and it suffered loss through MCX transactions for hedging its stock-in-trade. MCX transactions for hedging loss was not covered under speculative transaction and MCX transactions were done in normal course of business of assessee.

Held - Loss suffered was business loss.

Ambicaa Sales Corporation v. Principal Commissioner of Income-tax - [2024] 159 taxmann.com 631(Bangalore - Trib.)

Unaccounted income - Competent Authority carried out survey under section 133A at hospital of assessee and found certain unaccounted receipts in name of doctors and assessee thereafter filed revised return and disclosed unaccounted receipts as part of profit or gain of business of hospital.

Held - Unaccounted receipts were relating to business operations of assessee's hospital, they were taxable as business income under section 28. Section 68 was not applicable.

ACIT v. Surat Life Care (P.) Ltd. - [2024] 160 taxmann.com 239 (Surat-Trib.)

SECTION 32 DEPRECIATION
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Aircraft - Rate of depreciation – Aircraft - Assessee had acquired an aircraft in July 2012 and it was brought to India at owner's base after due clearances and a ferry flight in this regard was arranged. Even before certificate of airworthiness was issued by Director General of Civil Aviation on 21-9-2012, assessee was already de facto and de jure owner of aircraft.

Held - Depreciation was to be allowed at 40 per cent.

India Flysafe Aviation Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 1219 (Delhi - Trib.)

Carry forward of depreciation - New plant and machinery was used for a period of less than 180 days.

Held - Entire amount of additional depreciation cannot be claimed in subject assessment year, balance unclaimed amount can be claimed in subsequent assessment year.

Asian Paints Ltd. v. Asstt. Commissioner of Income-tax - [2024] 160 taxmann.com 356 (Mumbai -Trib.)

Intangibles – Valuation - Where Assessing Officer had inquired into all probable aspects of valuation of intangible assets and consequent claim of depreciation thereon by assessee and moreover assessee's basis of valuation of intangible assets was as per that prescribed by AS-26.

Held - Revisionary proceedings were not valid.

Accumax Lab Devices (P.) Ltd. v. Principal Commissioner of Income-tax - [2024] 160 taxmann.com 240 (Ahmedabad - Trib.)

Windmill - Assessee-company claimed depreciation on windmill purchased by it through a slump sale agreement. Assessee failed to prove that it had taken possession of windmill and same was put to use for its business during relevant financial year.

Held - Depreciation was rightly denied to assessee.

Rugby Regency (P.) Ltd. v. Additional Commissioner of Income-tax - [2024] 160 taxmann.com 1056 (Delhi - Trib.)

**SECTION 35AD
DEDUCTION IN RESPECT OF EXPENDITURE ON SPECIFIED BUSINESS**

Deduction through revised return - Assessee running a hospital filed revised return under section 139(5) claiming deduction under section 35AD for first time. since assessee had more than hundred beds at relevant time and it had filed original return in time.

Held - Deduction under section 35AD claimed for first time in revised return was allowable.
ACIT v. Surat Life Care (P.) Ltd.- [2024] 160 taxmann.com 239 (Surat-Trib.)

**SECTION 36
OTHER DEDUCTIONS**

SECTION 36(1)(iii) - INTEREST ON BORROWED CAPITAL

Interest - Assessing Officer disallowed interest paid by assessee to banks and others on ground that assessee diverted interest bearing funds for giving interest free advances. Assessee had huge interest free sundry creditors balance with him.

Held - Interest expenditure was to be allowed.
CCIT (OSD)/Principal Commissioner of Income-tax, Central-2 v. Bhupendra Champaklal Dalal - [2024] 160 taxmann.com 645 (Bombay)

Loans to subsidiary - Assessee company was charging lower rate of interest on loan extended to its wholly owned subsidiary and no addition had been made on that account in any of earlier years assessments.

Held - On same facts, Assessing Officer was not justified in making addition on account of lower rate of interest charged from AE.

Principal Commissioner of Income-tax v. Uniparts India Ltd. - [2024] 160 taxmann.com 92 (Delhi)

SECTION 36(1) (vii-a) - BAD DEBTS IN CASE OF BANKS

Provision on non-rural advances - Reopening - AO issued a reopening notice on ground that assessee had claimed provision for bad and doubtful debts on non-rural advances which was not in accordance with law. During original assessment proceedings AO had called upon assessee to give details of outstanding balance in provision for bad and doubtful debts created under section 36(1)(vii-a) and also raised a specific query in respect of rural branches separately and called for proof of such rural branches.

Held - Reopening of assessment was merely on basis of change of opinion and reopening was to be quashed.

Yes Bank Ltd. v. Assistant Commissioner of Income-tax, Circle 8(3)(2) - [2024] 160 taxmann.com 329 (Bombay)

Non-performing assets – Revision – Enquires made by AO - Assessing Officer during assessment proceeding issued a questionnaire to assessee regarding deduction on account of provision for non-performing assets and loss on interest rate swap and same was replied by assessee.

Held - It was not a case where no enquiry whatsoever had been conducted by Assessing Officer with respect to claims under consideration and, thus, revision order passed under section 263 was not sustainable.

Principal Commissioner of Income-tax v. Clix Finance India (P.) Ltd. - [2024] 160 taxmann.com 357 (Delhi)

SECTION 37
GENERAL

Appropriation of profit or deductible expenditure - Review petition was filed against order of Supreme Court wherein it was held that entire/whole amount of difference between Statutory Minimum Price (SMP) and Additional Price (SAP) fixed for sugarcane cannot be said to be an appropriation of profit, only component of profit worked out while determining final price can be said to be an appropriation of profit and rest of amount is to be considered as deductible expenditure.

Held - Review petition was dismissed.

Sharad Sahakari Sakhar Karkhana Ltd. v. Commissioner of Income-tax - [2024] 160 taxmann.com 88 (SC)

Corporate social responsibility expenditure - Assessee incurred CSR expenditure before 01.04.2015.

Held - Amendment brought by way of Explanation 2 to section 37(1) by Finance Act, 2014, with effect from 1-4-2015 is prospective in nature and thus, CSR expenditure incurred prior to 1-4-2015 was to be allowed.

Asian Paints Ltd. v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 402 (Mumbai -Trib.)

Disallowance of loss / expenses - Commissioner (Appeals) passed an ex parte order upholding addition on account of claim of derivative loss, loss of F&O, securities transaction and travelling and conveyance expenses made by Assessing Officer without giving opportunity of being heard to assessee, matter was to be remanded back to Commissioner (Appeals) for his objective and meritorious observations and findings on submissions made by assessee.

Wrinkle Marketing (P.) Ltd. v. Income-tax Officer - [2024] 159 taxmann.com 1395 (Kolkata - Trib.)

Extension of business - Decorative paint business - Assessee was engaged in business of manufacturing paints and enamels. It incurred expenditure on exploring business opportunities on decorative paints business in Indonesia and Turkey being an extension of existing business of assessee.

Held – Expenditure incurred on extension of business was revenue in nature.

Asian Paints Ltd. v. Asstt. Commissioner of Income-tax - [2024] 160 taxmann.com 356 (Mumbai - Trib.)

Electricity Transformer - Assessee, a builder and developer, paid certain amount to Gujarat Electricity Board (GEB) for installation of transformer at a project developed by it. Ownership of transformer was always with GEB and no new asset was created in favour of assessee and no personal benefit of enduring in nature was received or enjoyed by assessee.

Held - Impugned expenditure could not be treated as capital in nature, and thus, same could not be disallowed under section 37(1).

Deputy Commissioner of Income-tax v. Kishorbhai Babubhai Kheni - [2024] 159 taxmann.com 1476 (Surat-Trib.)

Interest – On loan utilised for investment in shares of subsidiary - High Court had held that where assessee-company had not commenced business of development of SEZ/Real estate and merely obtained loan from holding company which was utilized for investing in shares of subsidiary company, interest paid on loan could not be treated as expenditure incurred for purpose of business.

Held - SLP against order of High Court was dismissed.

Zuari Management Services Ltd. v. Commissioner of Income-tax - [2024] 160 taxmann.com 292 (SC)

Interest on TDS – Assessee paid interest on TDS.

Held - Interest paid on tax deductible at source is not an allowable expenditure.

India Flysafe Aviation Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 1219 (Delhi - Trib.)

Leased aircraft engine improvement repair and overall check-up expenses - Assessee claimed deferred revenue expenditure on account of engine improvement repair and overall checkup of helicopter taken on lease. Issue regarding allowability of such deferred revenue expenditure was restored back to Assessing Officer for previous assessment year 2012-13.

Held - Same was to be restored back to Assessing Officer for instant assessment year as well.

India Flysafe Aviation Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 1219 (Delhi - Trib.)

Legal expenses – To protect voting right - Assessee being chairman of a company holding 19 per cent shares incurred legal expenses in order to protect his interest of voting right.

Held - Legal expenses were allowable expenses under section 37(1).

Amrit Lal Batra v. Additional Commissioner of Income-tax - [2024] 160 taxmann.com 236 (Amritsar - Trib.)

Provision written back in subsequent year – Disposal of Effluent waste - Assessee had created a provision for expenses incurred for treatment of disposal of effluent waste and processing charges. Said amount had been credited back in subsequent assessment year as income.

Held - Same could not be taxed again in impugned assessment year.

Isagro (Asia) Agrochemicals (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-6(1)(2) - [2024] 160 taxmann.com 527(Mumbai - Trib.)

Provision written back in subsequent year – Liquidated damages - Assessee had entered into written contracts with parties in relation to liquidated damages on account of delay in deliverables and assessee had made provision for liquidated damages based on period of delay. Assessee had reversed provision for liquidated damages in year in which clients waived said liquidated damages and write back amount had been offered to tax by assessee.

Held - Disallowance of provision of liquidated damages was to be deleted.

Principal Commissioner of Income-tax-4 v. HumboldtWedag India (P.) Ltd. - [2024] 160 taxmann.com 605 (Delhi)

New line of business - Assessee was engaged in manufacturing paints and enamels, incurred expenditure on exploring various business opportunities such as furniture space, home improvement, kitchen space, bathroom space and acquisition of paints manufacturing company in Ethiopia.

Held – New line of business being completely a new line of business and not an extension of existing business of assessee, was capital in nature.

Asian Paints Ltd. v. Asstt. Commissioner of Income-tax - [2024] 160 taxmann.com 356 (Mumbai - Trib.)

Prior period expenses – Year of crystallisation - Assessee claimed expenses towards maintenance fee royalty payable to airport and contended that bills for these expenses were received in relevant assessment year, thus, these expenses were crystallized in relevant assessment year, Commissioner (Appeals) had erroneously concluded that assessee had accepted that these were prior period expenses.

Held - Issue was to be restored to Commissioner (Appeals) to give a fresh opportunity of hearing to assessee and consider evidences of assessee establishing that bills were received in relevant assessment year and payments were made in present assessment year.

India Flysafe Aviation Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 1219 (Delhi - Trib.)

Purpose of business - Trip for dealers - Expenditure was incurred by assessee under its trip scheme for its dealer for purpose of expanding assessee's business by encouraging dealers and distributors to achieve a specific target of purchase.

Held – Expenditure incurred being closely linked to assessee's business activity was an allowable expenditure.

Asian Paints Ltd. v. Asstt. Commissioner of Income-tax - [2024] 160 taxmann.com 356 (Mumbai - Trib.)

Repair and maintenance expenses - Assessee claimed expenses towards repair and maintenance and had brought on record invoice for same and copy of cheque showing payment against this invoice, however, Assessing Officer failed to take into consideration same.

Held - Issue was to be restored to Commissioner (Appeals) for taking into consideration evidences of assessee and decide issue afresh.

India Flysafe Aviation Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 1219 (Delhi - Trib.)

Sales return - Provision made for loss of sales return, being an expenditure which was not crystallized and was an anticipated loss.

Held – Provision could not be allowed as deduction.

Isagro (Asia) Agrochemicals (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-6(1)(2) - [2024] 160 taxmann.com 527 (Mumbai - Trib.)

**SECTION 40
AMOUNTS NOT DEDUCTIBLE**

**SECTION 40(a)(ia) - INTEREST, ETC. - PAID TO A NON-RESIDENT WITHOUT DEDUCTION OF
TAX AT SOURCE**

Advertisement/publicity, repair expenses - Assessee had incurred expenses on account of advertisement, sales promotion and clinical trial and Assessing Officer made disallowance under section 40(a)(ia) on ground that assessee had not deducted TDS on same. in view of fact regarding these details of expenses and also whether these parties have offered it for tax, assessee had to comply with conditions provided in proviso 201(1).

Held - Matter was to be remanded to Assessing Officer to examine applicability of proviso to section 201(1) and whether in few cases TDS was required to be deducted or not.

Isagro (Asia) Agrochemicals (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-6(1)(2) - [2024] 160 taxmann.com 527 (Mumbai - Trib.)

SECTION 40(a)(ii) - TAXES

Education cess – Education Cess on income tax was claimed as deduction

Held - Education cess is not an allowable expenditure under provisions of section 37(1), read with section 40(a)(ii).

Ericsson India Global Services (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-7(1) - [2024] 160 taxmann.com 599 (Delhi - Trib.)

**SECTION 40A
EXPENSES OR PAYMENTS NOT DEDUCTIBLE IN CERTAIN CIRCUMSTANCES**

SECTION 40A (2) - EXCESSIVE OR UNREASONABLE PAYMENTS

Payment to JV Partner - Assessee, a joint venture, obtained contracts/projects and assigned such contracts on back-to-back basis to other partner and Assessing Officer construed

assignment of contractual receipt by assessee to other partner as incurrance of expenditure and estimated unreasonable assignment to extent of 1.87 per cent of cost of contract to other partner and disallowed same by invoking section 40A(2)(b).

Held - Cost of any project could not be construed as expenditure, impugned disallowance deserved to be deleted.

SPML HCIL JV v. Income-tax Officer - [2024] 160 taxmann.com 231 (Kolkata - Trib.)

SECTION 40A (3) - CASH PAYMENT EXCEEDING PRESCRIBED LIMITS

Cash payments – Rule 6DD(e)(ii) - Where assessee engaged in wholesale trading of raw meat and animal wastes, made cash purchases all below Rs. 20,000 each and despite providing verified records, AO disregarded them.

Held - Purchases were covered under Rule 6DD(e)(ii) due to vendors lacking bank accounts and purchases being from remote areas, disallowances/additions made by A.O. was to be deleted.

Gyasuddin Qureshi v. Income Tax Officer, Ward 3(2) - [2024] 160 taxmann.com 290 (Delhi - Trib.)

Details not furnished – Purchases remained unsupported - Assessee, a government contractor, made cash payments exceeding Rs. 20,000 on a single day for material purchased. Assessee had not shown as to whether supplies were sourced from different persons and had not produced any supporting bills or vouchers.

Held - Disallowance made by Assessing Officer of 20 per cent of cash payments was in accordance with section 40A(3).

Mahendra Prasad Singh v. Commissioner of Income-tax - [2024] 160 taxmann.com 233 (Patna)

SECTION 43B
CERTAIN DEDUCTIONS TO BE ALLOWED ONLY ON ACTUAL PAYMENT

Swachh Bharat Cess - Assessee claimed deduction in respect of amount deposited as Swachh Bharat Cess. Assessing Officer disallowed said claim on ground that assessee had failed to demonstrate that amount was actually paid during year in terms of section 43B(a). Tribunal for first time proceeded to advert to section 43B(a) and upheld disallowance.

Held - Matter was to be remanded to Assessing Officer for considering claim of assessee afresh.

Matrix Cellular International Services (P.) Ltd. v. Joint Commissioner of Income-tax, Special Range-6 - [2024] 160 taxmann.com 127 (Delhi)

SECTION 44BB
SPECIAL PROVISION FOR COMPUTING PROFITS AND GAINS IN CONNECTION WITH THE BUSINESS FOR EXPLORATION, ETC. OF MINERAL OILS

Business profits – Supply / Leasing / Hiring of Rigs - Assessee, a non-resident, had entered into a contract with an Indian company for supply/lease/hire of rigs to be used for drilling and exploration of mineral oils.

Held - Amount received by assessee was fully covered under provisions of section 44BB and taxable on gross basis at rate of 10 per cent.

Commissioner of Income-tax, IT-3 v. Umw Sher (L) Ltd. - [2024] 160 taxmann.com 695 (Delhi)

SECTION 44BBB
SPECIAL PROVISION FOR COMPUTING PROFITS AND GAINS OF FOREIGN COMPANIES ENGAGED IN THE BUSINESS OF CIVIL CONSTRUCTION, ETC. IN CERTAIN TURNKEY PROJECTS

Offshore supply – Revenue was derived by assessee, a UK based company on basis of offshore supplies and not out of any construction, erection, testing or commissioning activities of a turnkey power project in India.

Held - Application of section 44BBB to such revenue, which was not per se taxable in India, would not be sustainable.

UK Grid Solutions Ltd. v. Deputy Commissioner of Income-tax (IT)-3(1)(1) - [2024] 160 taxmann.com 694 (Delhi - Trib.)

SECTION 44C
DEDUCTION OF HEAD OFFICE EXPENDITURE IN THE CASE OF NON-RESIDENTS

Salary paid to seconded employees – Global income of employees taxed in India - Assessee-bank paid salary to two Canadian nationals who were on secondment to Indian operations of assessee and Assessing Officer disallowed claim of deduction of salary paid to these employees on ground that said salary was in nature of head office expenditure under section 44C. Said employee had offered their global income in India for tax.

Held - Disallowance of claim of deduction of salary was to be deleted.

Bank of Nova Scotia v. Assistant Director of Income-tax (IT)-3(2) - [2024] 160 taxmann.com 10 (Mumbai -Trib.)

**SECTION 45
CAPITAL GAINS**

Share dealing - Capital gains or Business income - Assessee purchased shares with clear intention of being an investor and held shares by way of investment.

Held - Gain arising out of transfer of shares had to be treated as capital gain and not business income.

Amrit Lal Batra v. Additional Commissioner of Income-tax - [2024] 160 taxmann.com 236 (Amritsar -Trib.)

**SECTION 47
TRANSACTIONS NOT REGARDED AS TRANSFER**

Gift - Assessee-company gifted shares to NCPL.

Held - Such transaction would be exempt from capital gain.

Jai Trust v. Union of India - [2024] 160 taxmann.com 690 (Bombay)

**SECTION 48
MODE OF COMPUTATION**

Cost of improvement - Assessee sold his residential house and claimed cost of improvement while computing LTCG.

Held - All improvements made necessarily lead to improvement in value of sale, assessee was entitled to deduction towards cost of improvement.

Rajiv Ghai v. Assistant Commissioner of Income-tax, Circle1 IT-1(3)(1) - [2024] 160taxmann.com 509 (Delhi - Trib.)

Cost of improvement - Expenses were incurred for installation of lift and other sundry expenses to make house habitable.

Held - Expenses were an allowable item of cost of improvement.

Rajiv Ghai v. Assistant Commissioner of Income-tax, Circle1 IT-1(3)(1) - [2024] 160 taxmann.com509 (Delhi - Trib.)

**SECTION 54
PROFIT ON SALE OF PROPERTY USED FOR RESIDENCE**

Purchase of new house - Registered in name of Parents - Assessee had sold his residential house and reinvested sale proceeds in purchase of property which was registered in name of his parents. Investments in purchase of property were made by assessee from his bank

account for payment to seller of property and such registered property was gifted to assessee by parents.

Held - Assessee was eligible for deduction under section 54.

Rajiv Ghai v. Assistant Commissioner of Income-tax, Circle1 IT-1(3)(1) - [2024] 160 taxmann.com 509 (Delhi - Trib.)

SECTION 54F EXEMPTION IN CASE OF INVESTMENT IN RESIDENTIAL HOUSE

Ownership of house - Assessee claimed exemption under section 54F in respect of amount invested in a flat. Assessing Officer rejected said claim on ground that entire consideration for purchase of flat was not paid during relevant period. Assessee had filed additional evidence in form of share certificate and ledger of vendor to prove that entire consideration was paid.

Held - Matter was to be remanded back for de novo consideration.

Madan Mohan Mishra v. Income Tax Officer, Ward-8(2)(4) - [2024] 160 taxmann.com 42 (Mumbai - Trib.)

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SECTION 56
INCOME FROM OTHER SOURCES

Applicability on Shares issued to Directors - Scope of provision - Assessee had issued preference shares to director and ex-director of its company.

Held - Section 56(2)(viib) did not carve out any exception as regards applicability of same in a case where shares were issued to directors of a company and, therefore, AO was justified in invoking provisions of section 56(2)(viib).

Avinash Developers (P.) Ltd. v. Deputy/Assistant Commissioner of Income-tax, Circle-2(1) - [2024] 160 taxmann.com 256 (Raipur - Trib.)

Share Premium – On issue of Preference shares - Preference shares do not carry any stake in ownership of company, therefore, net asset value of company represented value of equity shares and not that of preference shares.

Held - NAV method could not be adopted for determining FMV of preference shares issued by assessee-company to its director and ex-director.

Avinash Developers (P.) Ltd. v. Deputy/Assistant Commissioner of Income-tax, Circle-2(1) - [2024] 160 taxmann.com 256 (Raipur - Trib.)

Valuation of Share – Rights Share - Rule 11UA - Assessee-company issued shares at premium and justified premium received by calculating fair market value of shares under rule 11UA. Principal Commissioner invoked revisionary proceedings on ground that FMV computed by assessee was incorrect and held that excess amount received by assessee would be its income as per section 56(2)(viib).

Held - Shares issued by assessee were right shares, 56(2)(viib) could not be invoked on a rights issue, and revisionary order was to be set aside.

Tiki Tar Industries Baroda Ltd. v. Principal Commissioner of Income-tax - [2024] 159 taxmann.com 1691(Ahmedabad - Trib.)

Valuation of shares – Issued to 100% holding company - Sub-section (2)(viib) - Assessee-company issued equity shares to its 100 per cent holding company at a premium based on FMV determined by a CA in accordance with DCF method as prescribed under rule 11UA.

Held - AO was not justified in recomputing FMV of shares under NAV method and making additions under section 56(2)(viib), furthermore since objective behind provisions of section 56(2)(viib) was to prevent unlawful gain by issuing company in garb of capital receipts, chargeability of deemed income arising from transactions between holding and subsidiary or vice versa would militate against solemn object of section 56(2)(viib) and, thus no addition could be made to income of assessee under section 56(2)(viib).

Rugby Regency (P.) Ltd. v. Additional Commissioner of Income-tax - [2024] 160 taxmann.com 1056(Delhi - Trib.)

Valuation of shares – Issued to 100% holding company - Sub-section (2)(viib) - Assessee-company issued shares to its holding company at a premium and Assessing Officer opined that

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premium charged was in excess of fair market value of shares and invoking provisions of section 56(2)(viib) added same to assessee's income.

Held - Premium charged was supportable by valuation report and premium charged was quite negligible, addition was not justified.

Income-tax Officer v. K V Global (P.) Ltd. - [2024] 160 taxmann.com 234 (Delhi - Trib.)

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SECTION 61
REVOCABLE TRANSFER OF ASSETS

Revocable transfer – Income to be assessed in hands of transferor.

Held - Income arising from revocable transfer of assets is taxable in hands of transferor, i.e., settler of revocable trust and it is to be clubbed in total income of transferor and not in total income of transferee of assets.

Reporter Family Private Trust v. Assessing Officer-ITO (IT), 26(1)(1) - [2024] 160 taxmann.com 459 (Mumbai - Trib.)

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**SECTION 68
CASH CREDITS**

Accommodation entry provider – Commission received by entry provider - Source of cash deposit was disclosed and in respect of such cash deposit assessee was treated as accommodation entry provider and, accordingly, brokerage/commission on aforesaid cash deposit was determined as income of assessee for providing service in form of accommodation entry.

Held - Addition made by Assessing Officer under section 68 was unsustainable.

Commissioner of Income-tax, Central-I v. Pramod Sharma - [2024] 160 taxmann.com 44 (Calcutta)

Bank deposits – Onus not discharged - Assessee was not maintaining any books of account and even assuming that passbook could not be treated as part of Books of Accounts. Admittedly, source of income in case of assessee had not been proved, in as much as, assessee had failed to prove id, entity/creditworthiness/genuineness of creditors, who had given cash loan as claimed by them.

Held - Therefore, impugned addition was justified.

Rajmeet Sing v. Income Tax Officer, Ward-2(3)- [2024] 160 taxmann.com 83 (Jharkhand)

Bank deposits – Onus not discharged - Assessee had failed to prove identity /creditworthiness/genuineness of creditors, who had given cash loan as claimed by them.

Held - Addition was justified.

Rajmeet Sing v. Income Tax Officer, Ward-2(3) - [2024] 160 taxmann.com 83 (Jharkhand)

Bank deposits – Income tax return not filed – Reopening - Assessee had not filed any income-tax return under provision of section 139(1) and there was cash deposit in bank account of assessee. In absence of any return filed by assessee Assessing Officer could not draw any inference about justification for source of cash deposit based on documents.

Held - Notice issued under section 147 was justified.

Prakashbhai Amrutlal Pala v. Income-tax Officer - [2024] 159 taxmann.com 1383 (Rajkot - Trib.)

Bank deposits – Source of deposit partly explained - Assessee had made cash deposits in his bank account. Assessee had sufficiently explained that such cash deposits were out of withdrawals from bank account in respect of certain amount. However, assessee had not explained source of cash of remaining amount

Held - No addition was warranted to extent of cash relatable to withdrawals and in respect of amount remaining unexplained, such cash deposits represented income of assessee and addition of same was liable to be sustained.

Prakashbhai Amrutlal Pala v. Income-tax Officer - [2024] 159 taxmann.com 1383 (Rajkot - Trib.)

Bank deposits – Reopening - Borrowed satisfaction – Non application of mind - Assessee-company in objections to reassessment submitted that cash deposits of Rs. 1.87 crores were made in bank account and said deposits were offered to tax but Assessing Officer without examining these details recorded reasons to believe that cash deposits of Rs. 3.73 crores had resulted in escapement of income.

Held - Entire basis of reopening was on information and there was no independent application of mind by Assessing Officer while recording reasons, reopening was unjustified.

BIC Cello (India) (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-5(2) - [2024] 160 taxmann.com 474 (Bombay)

Bank deposits – Misutilisation of KYC documents - Chartered Accountant of assessee, opened and operated bank accounts in name of assessee by allegedly misusing KYC documents of assessee.

Held - Additions made under sections 68 in name of assessee for having failed to explain source of cash deposits was to be deleted.

Pradeep Nimawat v. Income Tax Officer, Ward 2(1) - [2024] 160 taxmann.com 476 (Jodhpur - Trib.)

Cash credit entries - Major amount repaid during the year - Assessing Officer made additions under section 68 in respect of cash credit entries without properly examining ledger account of assessee and major portion of credit was repaid during year.

Held - Additions were to be deleted.

CCIT(OSD)/Principal Commissioner of Income-tax, Central-2 v. Bhupendra Champaklal Dalal - [2024] 160 taxmann.com 645 (Bombay)

Loan – Alleged to be bogus - Assessee received loan from a creditor. All transactions were routed through bank accounts. Mere fact that creditor had not charged interest on outstanding loan did not justify holding transactions to be bogus.

Held - Addition made on account of said loan amount was to be deleted.

CCIT /Principal Commissioner of Income-tax, Central-2 v. Bhupendra Champaklal Delal - [2024] 160 taxmann.com 560 (Bombay)

Loans – Onus discharged by the assessee - Assessing Officer had made addition under section 68 on account of loans taken by assessee as unexplained cash credits. Assessee had filed confirmation letter from lenders, bank statements, income tax return and statement of total income of lenders to prove identity of creditors, genuineness of transactions and creditworthiness of creditors.

Held - Addition made by Assessing was unsustainable.

Income Tax Officer, Ward-5(3)(1) v. Ice Worth Reality LLP - [2024] 159 taxmann.com 775 (Ahmedabad - Trib.)

Share application money – Onus discharged - Assessee had received share application money from various companies and assessee had provided all relevant documents and Assessing Officer did not make any adverse observation in respect of financials of such companies.

Held - Addition made under section 68 on account of share application money was to be deleted.

Vedic Foundation (P.) Ltd. v. ITO - [2024] 160 taxmann.com 1216 (Delhi - Trib.)

Share application money – Received in earlier year and not current year - Assessee-company had received share application money along with share premium in earlier assessment year and not in relevant assessment year.

Held - No addition could be made under section 68 with respect to share application money on ground that shares were allotted in relevant assessment year.

Income-tax Officer v. Winstar Ecom (P.) Ltd. - [2024] 159 taxmann.com 1531 (Mumbai - Trib.)

Share capital – Onus discharged - Assessee discharged onus and also established by additional evidence before Commissioner (Appeals) that it was director of company who was also major shareholder had been allotted shares and in remand report also, Assessing Officer had not drawn any adverse inference with respect to evidences submitted by assessee.

Held - Commissioner (Appeals) rightly deletion of Rs. 24.99 crores as identity, creditworthiness of person and genuineness of transaction had been established.

Income Tax Officer, Ward-12(3)(1) v. Next Avenue Ventures (P.) Ltd. - [2024] 160 taxmann.com 76 (Mumbai -Trib.)

Share transactions – Claim supported with documentary evidences - Assessee sold shares and claimed LTCG as exempt under section 10(38). Assessee had submitted evidences in form of contract notes/bills, demat statement and bank statement to prove genuineness of transactions of purchase and sale of shares by him and AO had no evidence that purchase and sale of shares were done through cash, additions made by AO on account of sale proceeds of shares as undisclosed income of assessee under section 68.

Held – Addition was to be deleted.

Income Tax Officer, Ward-5(3)(1) v. Ice Worth Reality LLP - [2024] 159 taxmann.com 775 (Ahmedabad - Trib.)

SECTION 69 UNEXPLAINED INVESTMENTS

Cash deposit - Assessee was carrying on business of sale of milk and AO had made an addition of bank deposits. Source of amount of credit in assessee's bank account was milk sale turnover for year under consideration.

Held - As per provisions of section 44AD, AO was to be directed to apply 8 per cent net profit on total milk sale.

Swaran Singh v. Income Tax Officer, Ward 4(1) - [2024] 159 taxmann.com 777 (Amritsar - Trib.)

Customs duty - Assessee failed to explain reasons for variation in amount of customs duty paid as per Annual Information Report and as per profit and loss account.

Held - Difference of amount was to be added to assessee's income under section 69.

Sanyang Exim India (P.) Ltd. v. Income-tax Officer - [2024] 159 taxmann.com 1491 (Delhi - Trib.)

FDI money – Shares issued - Assessee received certain amount in India under FDI route and AO made addition of said amount in hands of assessee under section 69 on ground that assessee had sent said amount in hawala route to Cyprus which had ultimately found its way in form of share capital and share premium under FDI route. FT&TR reference was made to Cyprus tax authorities, pursuant to which report duly confirmed that one LG fund had raised monies through issue of shares and those monies had been utilized by them for making investment in shares of assessee-company under FDI route.

Held - Addition made by AO were based on suspicion and were to be deleted.

Alchemist Touchnology v. Assistant Commissioner of Income-tax, Central Circle-20 - [2024] 160 taxmann.com 422 (Delhi - Trib.)

On money – Reopening of assessment - Assessing Officer issued to assessee a reopening notice on ground that during search and seizure action in case of a builder firm, it was found that assessee made on-money payment for purchase of a flat. There was no material on record to indicate that assessee had paid entire amount of flat in cash.

Held - Reopening notice was unjustified.

Sumathi Janardhana Kurup v. Income tax Officer, Ward-28(3)(1) - [2024] 160 taxmann.com 40 (Bombay)

SECTION 69A UNEXPLAINED MONEY, ETC.
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Cash deposits - Assessee made cash deposits of certain amount during demonetization period and claimed that said deposits were out of gifts received from her parents and as old currency was required to be deposited during demonetization period assessee deposited same out of her earlier withdrawals. Assessee had failed to establish identity, genuineness and creditworthiness of said transactions of said cash deposits during demonetization period by filing proper evidences.

Held - Addition made on account of said cash deposits was justified.

Vudatha Vani Rao v. Income-tax Officer - [2024] 159 taxmann.com 1394 (Visakhapatnam - Trib.)

Cash deposits - Assessee made cash deposits of certain amount before demonetization period. Said cash deposits were beyond scope of notice issued under section 143(2) for which assessee's case was selected for limited scrutiny only to examine deposits made during demonetization period.

Held - Addition made on account of said deposits made before demonetization period was to be deleted.

Vudatha Vani Rao v. Income-tax Officer - [2024] 159 taxmann.com 1394 (Visakhapatnam - Trib.)

Cash deposit - During demonetization period - Assessee had disclosed investment in his books of account and had also shown same in computation of income which was offered for taxation.

Held - Section 69A could not be invoked in case of assessee and thus, addition made on account of unexplained money was to be deleted.

Sobha Devi Dilipkumar v. Income-tax Officer - [2024] 160 taxmann.com 1249 (Visakhapatnam - Trib.)

Cash deposit - During demonetization period - Assessee running medical shops deposited certain amount in bank during demonetization period.

Held - Addition made on account of said amount deposited, merely on ground that amount was received during demonetization period, was to be set aside and matter was to be restored to file of Assessing Officer for verification.

Vijay Prakash Mantri v. Income-tax Officer - [2024] 159 taxmann.com 1393 (Hyderabad - Trib.)

Cash deposit - During demonetization period - AO noticed that during demonetization period assessee deposited a cash of certain amount in bank account which showed abnormal increase in sales with decrease in profitability compared to preceding year and thus made addition under section 69A. Assessee maintained and produced books of account and cash book before AO by offering explanation and by submitting copies of VAT returns to justify sales and corresponding receipts of cash book deposited in bank.

Held - Addition made under section 69A by AO without even disputing books of account was to be deleted.

Yogesh Gupta v. Assistant Commissioner of Income- tax - [2024] 159 taxmann.com 1396 (Delhi - Trib.)

Foreign bank account - Pursuant to search operation, Assessing Officer noted that assessee held foreign bank account at Geneva, Switzerland. As per exchange of information framework of DTAC/DTAA between India and France and being of view that assessee had not declared Swiss bank account in his return of income and funds of this account were also not disclosed by assessee, added same to total income of assessee as unexplained investment/deposit.

Held - Since no incriminating document was found during course of search proceedings, additions so made were to be deleted.

Deputy Commissioner of Income-tax, Central Circle-2 v. Arvind N Nopany - [2024] 160 taxmann.com 8 (Ahmedabad - Trib.)

Share transactions - Assessee purchased shares at Rs. 5 per share and sold same at Rs. 420 per share and claimed exemption under section 10(38) in respect of long-term capital gain arose from such sale. Assessee had paid amount for purchase of shares through cheque and certificate of said shares was also taken on record and Assessing Officer had not established that assessee was involved in price manipulation of said scrip.

Held - Long-term capital gain could not be treated as unexplained money under section 69A and assessee had rightly claimed exemption under section 10(38).

Puneet Singh R. Bhadoria v. Income-tax Officer - [2024] 159 taxmann.com 1486 (Ahmedabad - Trib.)

**SECTION 69C
UNEXPLAINED EXPENDITURE, ETC.**

Bogus purchases - Objections to reopening – Not disposed off - Assessing Officer framed assessment making additions to assessee's income by way of disallowance of purchases made by assessee on ground that same were bogus and unexplained.

Held - Objections filed by assessee against reopening of assessment were not decided by Assessing Officer, impugned assessment so framed was to be set aside.

Champalal Omprakash v. Income-tax Officer - [2024] 159 taxmann.com 1397 (Kolkata - Trib.)

Bogus purchases - Assessing Officer, on noting that assessee was engaged in bogus purchases, disallowed entire purchases, considering it unexplained expenditure under section 69C. Commissioner (Appeals) on finding genuineness in payments, restricted disallowance to 8% of total purchases.

Held - Commissioner (Appeals) needed no interference.

Principal Commissioner of Income-tax-32 v. Hitesh Mody (HUF) - [2024] 160 taxmann.com 110(Bombay)

Bogus purchases - Assessing Officer was of view that purchases made by assessee were made from grey market and made addition towards bogus purchases at rate of 25 per cent of purchases. Assessing Officer had made said addition on estimate basis and further corresponding sales had been accepted.

Held - Addition towards bogus purchase was not sustainable and same was to be deleted.

Deputy Commissioner of Income-tax v. Sharp Mint Ltd. - [2024] 159 taxmann.com 1381 (Delhi - Trib.)

Commission - Documents seized during a search at assessee's residence indicated transactions that assessee claimed were related to real estate commissions. However, assessee couldn't explain discrepancies with details provided by a developer company.

Held - AO rightly treated those transactions as unexplained expenditures under section 69C.

Isidore Fernandes v. Assistant Commissioner of Income-tax, Central Circle, Panaji - [2024] 160taxmann.com 216 (Bombay)

Opening stock - Profit declared by assessee for earlier assessment year included closing stock of certain amount but no set-off was provided by treating same at nil value.

Held - In subsequent assessment year closing stock was required to be treated as opening stock and could not have been disallowed.

Principal Commissioner of Income-tax-3 v. Asian Agency - [2024] 160 taxmann.com 248 (Gujarat)

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Purchases - Assessee, engaged in business of manufacturing and trading of petro-chemicals, had made purchases and had submitted addresses, GST No. PAN No., amount of purchases (Net of VAT), bill/voucher/challan issued by parties mentioned details of assessee, excise duty paid, details of truck/challan no., order no. etc. from all parties and payment were made through cheques.

Held - Addition made by Assessing Officer treating entire purchase as non-genuine simply because notice sent under section 133(6) through ITBA portal was not responded ignoring other evidences and details available on record was to be deleted.

Isagro (Asia) Agrochemicals (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-6(1)(2) - [2024] 160 taxmann.com 527 (Mumbai - Trib.)

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SECTION 70
SET OFF OF LOSS FROM ONE SOURCE AGAINST INCOME FROM ANOTHER SOURCES
UNDER SAME HEAD OF INCOME

Set off of STCL – Assessee claimed set off of STCL against STCG, though the rate of tax differed.
Held - Under provisions of section 70(2), STCL arising from any asset could be set off against STCG arising from any other asset under a similar computation made irrespective of different rate of tax.

JS Capital LLC v. Assistant Commissioner of Income-tax, (IT) Circle-3(1)(1) - [2024] 160 taxmann.com 286 (Mumbai - Trib.)

SECTION 80
SUBMISSION OF RETURN FOR LOSS

Carry forward of loss - Explanation 2 to section 139 - Assessee had filed its original return for assessment year 2019-20 within time limit specified under Explanation 2 to section 139(1) and not on 20-2-2020 as mentioned by Commissioner (Appeals).

Held - Assessee was to be allowed to carry forward loss for assessment year 2019-20.

Paytm First Games (P.) Ltd. v. Assistant Director of Income-tax - [2024] 159 taxmann.com 1511 (Delhi - Trib.)

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SECTION 80G
DEDUCTION IN RESPECT OF DONATIONS TO
CERTAIN FUNDS, CHARITABLE INSTITUTIONS, ETC.

Approval under sub-section (5) – Condonation of delay - Assessee-trust filed application in Form No. 10AB for approval under clause (iii) of first proviso to sub-section (5) of section 80G and Commissioner (Exemption) having noted that assessee had not filed application within time limit as stated in clause (iii) of third proviso to sub-section (5) of section 80G rejected application as not maintainable. Phrase 'whichever is earlier' used in clause (iii) of third proviso to section 80G(5) was applicable only to newly constructed trust and not to old trust.

Held - Delay in filing Form No. 10AB deserved to be condoned.

Vananchal Kelavani Trust v. Commissioner of Income-tax (Exemption) - [2024] 159 taxmann.com 634 (Surat-Trib.)

Approval under sub-section (5) – Condonation of delay - Assessee-trust filed application in Form No. 10AB for approval under clause (iii) of first proviso to sub-section (5) of section 80G on 2-12-2022 and Commissioner (Exemption) having noted that assessee had not filed application on or before 30-9-2022 as per as per CBDT circular No.8/2022 rejected application as not maintainable. **Held** - Tribunal had power to condone delay. Hence, delay was to be condoned and matter was to be remitted to Commissioner (Exemption) to decide application afresh on merits.

Swachh Vapi Mission Trust v. Commissioner of Income-tax (Exemption) - [2024] 160taxmann.com 657 (Surat-Trib.)

Approval under sub-section (5) – Expenditure not religious in nature - Assessee-society, engaged in religious and charitable activities and registered under section 12AA, applied for regular approval under section 80G(5)(vi). Assessee-society was formed with objects to provide education, research and training, etc. and expenditure incurred by it were not found to be religious in nature.

Held – Society was eligible for approval under section 80G(5).

Sadhumargi Shantkranti Jain v. Commissioner of Income-tax (Exemption) - [2024] 159 taxmann.com 636 (Raipur - Trib.)

Approval under sub-section (5) – Expenditure on religious activities - Commissioner (Exemption) rejected assessee's application for approval under section 80G(5) on ground that certain objects of assessee were religious in nature. However, Commissioner (Exemption) had not made any specific observations as to whether less than 5 per cent of total income had been spent by assessee towards religious purposes.

Held - Matter was to be remanded back for de novo consideration.

Jay Mataji Charitable Trust v. Commissioner of Income-tax (Exemption) - [2024] 160 taxmann.com 276 (Rajkot - Trib.)

Approval under sub-section (5) – Objects alleged to be religious in nature - Commissioner (Exemption) rejected application of assessee-trust for approval under section 80G(5) on

ground that one of objects of assessee-trust was religious in nature. However, he did not point out any specific object in trust deed which could be termed as religious in nature.

Held - Matter was to be remanded back for de novo consideration.

Swaminarayan Bhaktidham Dwarka Charitable Trust v. Commissioner of Income-tax (Exemption) - [2024] 160 taxmann.com 279 (Rajkot - Trib.)

Proviso to section 80G(5) – Timeline is directory - Timeline prescribed under clause (iii) of first proviso to section 80G(5) should be treated as directory and not mandatory. Timeline prescribed for filing Form No.10A for recognition under section 12A had been extended up to 30-9-2023.

Held – Extended timeline for filing Form No. 10A may be treated as extended for forms namely Form No.10AB for renewal of approval/recognition/registration under clause (iii) of first proviso to section 80G also.

CIT-1982 Charitable Trust v. Income Tax Officer - [2024] 160 taxmann.com 475 (Chennai - Trib.)

CSR - Only condition for claiming deduction under section 80G as per existing provision is institute to which donation is made must have been registered under section 80G.

Held - Once aforesaid condition is fulfilled, donor is entitled to avail deduction.

Ericsson India Global Services (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-7(1) - [2024] 160 taxmann.com 599 (Delhi - Trib.)

Date of application – Provisional registration - CIT (Exemption) rejected application of assessee for provisional approval under clause (iv) to first proviso to section 80G(5) observing that assessee had already commenced its activities since long even prior to grant of provisional registration, after grant of provisional approval, application could not be rejected on ground that institution had already commenced its activities even prior to grant of provisional registration.

Held - Date of commencement of activity would be counted when an activity was undertaken after grant of provisional registration either under clause (i) or clause (iv) to first proviso to section 80G(5).

Tomorrow's Foundation v. Commissioner of Income-tax (Exemption) - [2024] 160 taxmann.com 174 (Kolkata - Trib.)

Date of application - Assessee had been granted provisional approval under clause (iv) to first proviso to section 80G(5). Application for final approval under clause (iii) to first proviso to section 80G(5) could not be rejected on ground that institution had already commenced its activities even prior to grant of provisional registration.

Anudip Foundation for Social Welfare v. Commissioner of Income-tax (Exemption) - [2024] 160 taxmann.com 624 (Kolkata - Trib.)

SECTION 80-IA
DEDUCTIONS IN RESPECT OF PROFITS AND GAINS FROM INDUSTRIAL UNDERTAKING OR
ENTERPRISE ENGAGED IN INFRASTRUCTURE DEVELOPMENT, ETC.

Power generation - Interest earned High Court had held that where assessee was a Government of Odisha enterprise, solely engaged in business of generation of power and power generated by assessee's plants was sold exclusively to GRIDCO and assessee had no other activity except power generation and interest income was earned by it from advances given to its employees and further, payment for electricity supplied was sought to be made up by GRIDCO by issuing bonds on which assessee earned interest, therefore, interest income had a direct nexus with essential business activity of assessee and revenue was in error in disallowing deduction under section 80-IA.

Held – SLP against order of High Court was dismissed.

Assistant Commissioner of Income-tax, Circle 2(2) v. Orissa Power Generation Corporation Ltd. - [2024] 160 taxmann.com 507 (SC)

Form No 10CCB – Delay in filing - Deduction under section 80-IA was not allowed to assessee for non-filing of Form No. 10CCB within prescribed time and Commissioner (Appeals) deleted said disallowance, since Commissioner (Appeals) had not analysed relevant judicial precedents on subject and had simply accepted version of assessee without independently applying his mind to facts of case.

Held - Matter was to be restored to file of Commissioner (Appeals) for de novo consideration.

Assistant Commissioner of Income-tax v. Shreeji Shipping Services (India) Ltd. - [2024] 160 taxmann.com 277 (Rajkot - Trib.)

SECTION 80-IB
DEDUCTION IN RESPECT OF PROFITS AND GAINS FROM CERTAIN INDUSTRIAL UNDERTAKINGS OTHER THAN INFRASTRUCTURAL DEVELOPMENT UNDERTAKINGS

Housing projects - Reopening of assessment – Change of opinion - Deduction claimed by assessee under section 80-IB was subject matter of consideration by Assessing Officer during original assessment proceedings. Reopening of assessment to deny deduction claimed under section 80-IB(10) merely on basis of change of opinion of Assessing Officer from that held earlier during course of assessment proceedings would not constitute justification and/or reason to believe that income chargeable to tax had escaped assessment.

Held – Reopening of assessment was not justified.

Mahavir Enterprises v. Income-tax Officer, Ward 28(2)(2) - [2024] 160 taxmann.com 38 (Bombay)

Revision – Assessee not eligible for deduction - In assessment order Assessing Officer allowed deduction under section 80-IB(11) claimed by assessee. However, he overlooked that assessee was not eligible for deduction under section 80IB(11) rather it was eligible for deduction under section 80-IB(11A).

Held - Impugned order passed by Assessing Officer was erroneous as well as prejudicial to interest of revenue, and therefore, same was to be set aside and revisionary power was rightly invoked by Principal Commissioner under section 263.

Kishan Cold Storage v. Principal Commissioner of Income-tax - [2024] 159 taxmann.com 1221 (Rajkot - Trib.)

SECTION 80P
DEDUCTION IN RESPECT OF INCOME OF CO-OPERATIVE SOCIETIES

Commission - Assessee, co-operative society, had received commission income on collection of MSEDCL bills which was from business activity carried on by assessee.

Held - Same was eligible for deduction under section 80P(2)(a).

Anand Urban Cooperative Credit Society Ltd. v. Income Tax Officer, Ward-1(5) - [2024] 160 taxmann.com 288 (Pune - Trib.)

Commission - Assessee, co-operative society, claimed deduction under section 80P(2)(a)(iii) in respect of commission earned from a co-operative society by marketing arecanut grown by members. Assessee had wrongly claimed deduction under section 80P(2)(a)(iii) instead of claiming deduction under section 80P(2)(e).

Held - Matter was to be remanded back to Assessing Officer to examine afresh as to whether assessee was entitled to deduction under any of limbs under section 80P.

Savanoor Primary Agricultural Co-operative Society Ltd. v. Income-tax Officer - [2024] 159 taxmann.com 1493 (Bangalore - Trib.)

Grant - Assessee-society engaged in providing Mini Bank service and sales of fertilizer to its Tribal members claimed deduction under section 80P for miscellaneous income. Said income mainly constituted of grant received from West Bengal Government for various activities as per its registered bye-laws.

Held - It would be eligible for deduction under section 80P.

Udyan Large Size Multipurpose Co-operative Society Ltd. v. Income-tax Officer - [2024] 160 taxmann.com 167 (Kolkata - Trib.)

Interest from co-operative society - Assessee claimed deduction under section 80P on interest income earned on fixed deposits with banks. Assessee failed to bring any material on record to show that interest received by assessee was only from cooperative society and it was not carrying on business of banking as per RBI Regulations.

Held - Matter was to be remanded to Assessing Officer to determine same.

The Ideal Homes Co-operative Building Society Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 1529(Bangalore - Trib.)

Interest income - Assessee, co-operative society, had received interest income from a co-operative bank which was registered under Co-operative Societies Act, 1912.

Held - Said interest income was eligible for deduction under section 80P(2)(d).

Anand Urban Cooperative Credit Society Ltd. v. Income Tax Officer, Ward-1(5) - [2024] 160 taxmann.com 288 (Pune - Trib.)

Interest income - Assessee co-operative society claimed that interest income earned by it from investments with Central District Co-operative Bank was in compliance with relevant provisions of Karnataka Co-operative Societies Act 1959 and relevant Rules. Revenue had not adjudicated contentions raised by assessee.

Held - Issue was to be remanded back to AO to examine whether such interest income received by assessee was out of compulsions and in compliance with Karnataka State Cooperative Societies Act, 1959 and relevant Rules and if it was so, interest income was to be assessed as business income and entitled to deduction under section 80P(2)(a)(i).

Kalika Parameswari Co-operative Society Ltd. v. ITO - [2024] 159 taxmann.com 1466 (Bangalore - Trib.)

Interest - Assessee-co-operative society contended that interest received from certain co-operative banks was on account of compliance with rule 28 of Karnataka Co-operative Societies Rules, 1960, therefore, it constituted income from business of providing credit facilities to its members, and eligible for deduction under section 80P(2)(a).

Held - Assessing Officer was to be directed to examine claim of assessee and if same was found to be out of compulsions, such interest income derived would be entitled to deduction under section 80P(2)(a)(i).

Savanoor Primary Agricultural Co-operative Society Ltd. v. Income-tax Officer - [2024] 159 taxmann.com 1493 (Bangalore - Trib.)

Interest - Assessee, co-operative society, claimed deduction under section 80P. Commissioner (Appeals) directed Assessing Officer to examine whether assessee was extending/providing credit facilities to non-members and income earned out of such activity could not be granted deduction under section 80P(2)(a)(i).

Held – Commissioner (Appeals)'s action was upheld.

Savanoor Primary Agricultural Co-operative Society Ltd. v. Income-tax Officer - [2024] 159 taxmann.com 1493 (Bangalore - Trib.)

Interest - Interest income was earned by assessee-co-operative society on investments made with co-operative banks/scheduled banks.

Held – Assessee was not eligible for deduction either under section 80P(2)(a)(i) or under section 80P(2)(d).

Savanoor Primary Agricultural Co-operative Society Ltd. v. Income-tax Officer - [2024] 159 taxmann.com 1493 (Bangalore - Trib.)

Interest – Revision - Assessee co-operative bank had not claimed deduction under section 80P(2)(a)(i) or 80P(2)(d) on interest income earned by it from various banks including co-operative banks and had showed same as income from other sources and accordingly Assessing Officer had not granted any deduction on said interest income. , impugned revision under section 263 on ground that Assessing Officer ought to have disallowed deduction under section 80P(2)(d) in respect of interest income on banks including co-operative banks was unjustified.

Pane Mangalore RSS Bank Panemangalore RSS Ltd. v. Income Tax Officer - [2024] 159taxmann.com 1483 (Bangalore - Trib.)

Interest income – Revision - Assessee a co-operative society claimed deduction under section 80P(2)(d) on interest income earned from deposits placed with a co-operative bank and Assessing Officer after due examination of facts allowed said claim.

Held - Principal Commissioner was not justified in invoking revisionary jurisdiction merely on ground that interest income was not earned from any other co-operative society but from scheduled commercial banks.

Jagadhri Co-operative Marketing Cum Processing Society Ltd. v. Principal Commissioner of Income-tax - [2024] 159 taxmann.com 1253 (Chandigarh - Trib.)

Interest income: Provisions of section 80P(4) is relevant only where assessee is a co-operative bank and claims deduction under section 80P and not where assessee is a co-operative society.

Jagadhri Co-operative Marketing Cum Processing Society Ltd. v. Principal Commissioner of Income-tax - [2024] 159 taxmann.com 1253 (Chandigarh - Trib.)

Storage of agricultural produce – Pledged to society - Assessee co-operative society claimed deduction under section 80P(2)(e) on income earned from storing pledged agricultural produce against loans given by it. Full details were not available before Assessing Officer regarding this claim of assessee.

Held - Matter was to be remanded back to Assessing Officer to examine afresh as to whether assessee was entitled to deduction under section 80P(2)(e) or 80P(2)(a)(i).

Savanoor Primary Agricultural Co-operative Society Ltd. v. Income-tax Officer - [2024] 159 taxmann.com 1493 (Bangalore - Trib.)

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SECTION 90
AGREEMENT WITH FOREIGN COUNTRIES OR SPECIFIED TERRITORIES

Condonation of delay - Appeal was filed by assessee before Commissioner (Appeals) with a delay of 335 days against denial of claim of relief under section 90 in respect of tax paid by assessee in Norway on income earned in Norway. Assessee had explained that it took time to get documents related to details of all tax paid from Norway particularly considering situation emanating from COVID-19 pandemic.

Held - Impugned delay in filing appeal was to be condoned and appeal was to be decided on merits for relief under section 90.

Hanumantappa Giriyapur Manjunatha v. Income-tax Officer - [2024] 159 taxmann.com 1496 (Bangalore - Trib.)

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SECTION 92B
MEANING OF INTERNATIONAL TRANSACTION

Corporate guarantee - Corporate guarantee was charged by assessee from its associated enterprises at rate of 1 per cent.

Held - Corporate guarantee at 1% was at ALP.

Zydu Lifesciences Ltd. v. Deputy Commissioner of Income-tax, Circle 1(1)(2) - [2024] 160 taxmann.com 37(Ahmedabad - Trib.)

Letter of Comfort - Lending or borrowing / Capital financing - Assessee-company issued letters to banks on behalf of some of its associated enterprises who availed loans from banks outside India. Assessee had considered letters of comfort/support to banks on behalf of some of its subsidiaries as its contingent liability.

Held - Letters of comfort issued by assessee constituted an international transaction within the meaning of section 92B.

Asian Paints Ltd. v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 214 (Mumbai - Trib.)

Letter of Comfort – For credit facilities - Assessee issued a letter of comfort towards credit facilities sanctioned by bank to assessee's subsidiaries. Terms of letter of comfort given by bank to borrower created an obligation on borrower that borrower would prepay loan in case assessee ceased to hold 51 per cent stake in borrower company.

Held - Assessee had given to bank towards loan facility granted to its subsidiary was only a letter of comfort and not a guarantee therefore, adjustment made by TPO was to be deleted.

Lupin Ltd. v. Deputy Commissioner of Income-tax. - [2024] 160 taxmann.com 691 (Mumbai - Trib.)

SECTION 92C
COMPUTATION OF ARM'S LENGTH PRICE

Methods for determination of - CUP method – MAM - Indian division of assessee-banking company, engaged in trading and finance of precious metals, imported bullion on consignment basis from its London branch which was sold through various product offerings. LBMA(London Bullion Market Association) database did not capture volatility in market because these rates were published at two times of date.

Held - High and low rate published by KITCO & Reuters would be MAM for comparison while benchmarking international transactions of trading in bullion and silver.

Bank of Nova Scotia v. Deputy Commissioner of Income-tax - [2024] 160 taxmann.com 177 (Mumbai - Trib.)

Methods for determination of - CUP Method - Tribunal while disposing of assessee's appeal did not deal with issues raised by assessee such as terminal value, comparing actual figures

with projections, availability of CUP method, etc. for determination of value of bundle of sports rights.

Held – Non consideration of basic submissions made at hearing was clearly a mistake apparent from record, Tribunal ought to have allowed rectification application.

Star India (P.) Ltd. v. Income-tax Appellate Tribunal - [2024] 160 taxmann.com 244 (Bombay)

Methods for determining ALP – RPM - Tribunal had firstly observed that RPM as adopted by assessee would clearly be applicable. However, in very next paragraph, it had proceeded to undertake quantification of arm's length price in relation to AMP expenditure.

Held - Observations being clearly inconsistent and incompatible, matter was to be remanded for considering appeal afresh.

Haier Appliances India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 160 taxmann.com 415 (Delhi)

Methods for determination of - Other method - Assessee-company, engaged in setting up a coal based thermal mega power plant, imported majority of plant and equipment for said project from its AE. Assessee adopted 'other method' as MAM and noted hard cost of plant and equipment for power projects as benchmarked by statutory body called Central Electricity Regulatory Commission (CERC). Most important criterion for using any method to fix ALP is availability of reliable comparable data which in instant case was a statutory body.

Held - Method followed by assessee to benchmark hard cost of equipment imported from AE was in accordance with Rule 10AB.

RKM Powergen (P.) Ltd. v. Deputy Commissioner of Income-tax, Central Circle-1(1) - [2024] 160 taxmann.com 480 (Chennai - Trib.)

Methods for determination of - Other method - Assessee-company, engaged in setting up a coal based thermal mega power plant, imported majority of plant and equipment for said project from its AE. Project executed by assessee was industry specific and capital goods imported were not general in nature and there was no comparable available in public domain.

Held - Method followed by assessee to benchmark import of capital goods from AE under any 'other method' would be in accordance with prescribed method for benchmarking this kind of transaction.

RKM Powergen (P.) Ltd. v. Deputy Commissioner of Income-tax, Central Circle-1(1) - [2024] 160 taxmann.com 480 (Chennai - Trib.)

Comparability factors - Abnormal events – Amalgamation - A company engaged in software development services had undergone a process of amalgamation with another company and nothing had been brought on record to establish impact or otherwise of amalgamation on profitability.

Held - Issue was to be restored to Assessing Officer for examining this aspect and, thereafter, decide whether it could be treated as a comparable to assessee engaged in providing contract software development services to its AEs.

Nokia Solutions and Networks India (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-15 - [2024] 160 taxmann.com 729 (Delhi - Trib.)

Comparability factors - Brand value - Selected company was having high brand value and profitability as compared to assessee-company.

Held – Such selected company was to be excluded from list of comparables.

Principal Commissioner of Income-tax v. INTEGREON India (P.) Ltd. - [2024] 160 taxmann.com 453 (Delhi)

Comparability factors - Loss making company - TPO rejected a company selected by assessee on ground that it was having persistent losses for last three years up to and including financial year 2014-15. Assessee had furnished cogent evidence to demonstrate that company had made profit in financial year 2015-16.

Held - This company was to be included in list of comparables.

Nokia Solutions and Networks India (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-15 - [2024] 160 taxmann.com 729 (Delhi - Trib.)

Comparability factors - Segmental result - Assessee was engaged in providing contract software development services to its AEs. A company engaged in providing custom development services to offshore and also engaged in software engineering services in different fields were included in comparables.

Held - In absence of segmentals, the company was to be excluded from list of comparables.

Nokia Solutions and Networks India (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-15 - [2024] 160 taxmann.com 729 (Delhi - Trib.)

Comparables, functional similarity - Software consultancy/development services - Tribunal in original order had rendered incompatible and inconsistent findings regarding a comparable company.

Held - Tribunal was justified in recalling its original order and correcting manifest error apparent on record.

Principal Commissioner of Income-tax v. Fiserv India (P.) Ltd.- [2024] 160 taxmann.com 315 (Delhi)

Comparables, functional similarity - Software consultancy/development services - Assessee was purely a captive contract software development services provider and design and overall guidance relating to specific software was provided by AEs.

Held - A company which had incurred sales promotion and marketing expenses and also owned plant, equipment and other intangible assets which presupposes that it was a full risk bearing entity unlike assessee which was more or less a no risk-entity could not be selected as a comparable.

Nokia Solutions and Networks India (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-15 - [2024] 160 taxmann.com 729 (Delhi - Trib.)

Comparables, functional similarity - Software consultancy/development services - Assessee was engaged in providing contract software development services to its AEs.

Held - A company earning revenue from software development services was functionally similar to assessee and should be treated as comparable.

Nokia Solutions and Networks India (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-15 - [2024] 160 taxmann.com 729 (Delhi - Trib.)

Operating profit - Cost computation - Assessee computed segmented operating margin on cost from rendering of designing engineering and other related services to its AEs but TPO took total revenue and total expenditure for purpose of determining ALP.

Held - Matter was to be remanded back to consider details furnished by assessee in respect of margin computation for provision of services to AEs.

TPSC (India) (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-2(1) - [2024] 160 taxmann.com 693 (Hyderabad - Trib.)

Adjustment -AMP expenses – Revision - Assessee excluded delivery and warranty expenses from AMP expenses and TPO accepted same after due enquiry.

Held - Commissioner could not have revised order of TPO by holding that delivery and warranty expenses were to be included in AMP expenses.

Amazon Seller Services (P.) Ltd. v. Commissioner of Income-tax - [2024] 160 taxmann.com 9 (Bangalore - Trib.)

Adjustments- Aggregation of transactions - Assessee-company aggregated transaction of payment of royalty and payment of technical fee to its AE but TPO had made upward adjustments in respect of royalty and fee for technical services. Said adjustments during relevant year were deleted by DRP and in subsequent years also said adjustments were deleted by DRP.

Held - Bearing in mind consistent approach, there was no justification to interfere with order of Tribunal deleting said adjustment.

Principal Commissioner of Income-tax v. Woodward India (P.) Ltd. - [2024] 160 taxmann.com 539 (Delhi)

Adjustments - Benefit from transaction/Allowability of expenditure - Intra-group services received by assessee-company were intrinsically linked to core business operations of assessee and there existed a direct nexus between intra-group services received by assessee vis-a-vis revenue earned/cost incurred by assessee.

Held - TP adjustment made by TPO was to be deleted.

Avery Dennison (India) (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-1(1) - [2024] 160 taxmann.com 499 (Delhi - Trib.)

Adjustment - Guarantee commission - Assessee issued corporate guarantee on behalf of its AEs and interest benefit of explicit guarantee accrued to both guarantor and borrowed.

Held - Saving of interest benefit between assessee and AE was to be split at 50:50 basis.

Dabur India Ltd. v. Deputy Commissioner of Income-tax, Circle-7(1) - [2024] 160 taxmann.com 595 (Delhi - Trib.)

Adjustments - Guarantee Commission - Assessee had given corporate guarantee on behalf of its subsidiary and TPO determined ALP of said transaction by taking into account interest rate

for unsecured bonds of AAA rate companies. Corporate guarantee was given by assessee on behalf of its AE for availing loan facility to reduce interest rate charged by banks.

Held - ALP on corporate guarantee commission was to be determined on basis of interest saving approach.

ACG Associated Capsules (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-42 - [2024] 160 taxmann.com 623 (Mumbai - Trib.)

Adjustment – Interest - Assessee had advanced Optionally Convertible Loans (OCL) to its associated enterprise. TPO had proposed adjustment on account of charging of interest on OCL by adopting same methodology followed in preceding assessment years, which was unjustified.

Held - Same was to be deleted.

Zydus Lifesciences Ltd. v. Deputy Commissioner of Income-tax, Circle 1(1)(2) - [2024] 160 taxmann.com 37 (Ahmedabad - Trib.)

Adjustment – Interest - Assessee- company advanced loan to an associated enterprise and charged interest at rate of 1 month LIBOR plus 300 basis points, adopted CUP method and considered JPSPL, its associated enterprise, as internal comparable because JPSPL had taken loan from Citibank Singapore for tenure of 3 months at rate of 6 months LIBOR plus 225 basis points. Both loans were short term loans, guarantee had been advanced by assessee as a matter of commercial prudence primarily to protect business interest of group by fulfilling shareholder's obligation and both transactions pertained to same period in which LIBOR rates were applied i.e. in 2012.

Held - Said transaction was at arm's length.

Maharashtra Seamless Ltd. v. Deputy Commissioner of Income-tax, Circle-16(1) - [2024] 160 taxmann.com 143(Delhi - Trib.)

Adjustments – Interest - High Court had held that where assessee received certain amount on account of Interest on receivables wherein credit agreed between assessee and its AEs was 30 days, extra credit allowed could be considered as an independent international transaction and same be compared with internal CUP being average cost of total funds available to assessee.

Held - SLP against order of High Court was dismissed.

Principal Commissioner of Income-tax v. AMD India (P.) Ltd. - [2024] 160 taxmann.com 355 (SC)

Adjustments – Interest - Assessee raised invoices on account of sales made to its AEs. International transactions were benchmarked separately for its two segments, separate benchmarking would not be required for receivables.

Held - Notional interest imputed of trade receivables was to be deleted.

Dabur India Ltd. v. Deputy Commissioner of Income-tax, Circle-7(1) - [2024] 160 taxmann.com 595 (Delhi - Trib.)

Adjustments – Interest - Assessee had given loan to its 100 per cent subsidiary, however neither assessee nor revenue had benchmarked said transaction and merely considered reasonable estimations on notional interests to be levied.

Held - Matter was to be remanded back for purpose of benchmarking said transaction.

ACG Associated Capsules (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-42 - [2024] 160 taxmann.com623 (Mumbai - Trib.)

Adjustment – Interest - TPO made an adjustment on account of outstanding receivables. Factors responsible for delay have not been brought on record either by assessee nor had been examined by TPO.

Held - Issue was to be remanded to Assessing Officer for de novo adjudication.

Nokia Solutions and Networks India (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-15 - [2024] 160 taxmann.com 729 (Delhi - Trib.)

Adjustment - Operating profit/cost - Computation - ESOP expenditure is non-operating expenses for purpose of computation of operating margin.

Held – ESOP expenditure is to be excluded.

Amazon Seller Services (P.) Ltd. v. Commissioner of Income-tax - [2024] 160 taxmann.com 9 (Bangalore - Trib.)

Adjustments - Operating profit/cost - Computation - During calculation of Net profit margin, TPO had considered depreciation of assessee and made TP adjustment and grievance of assessee was to consider depreciation as a part of total cost would not be appropriate for purpose of benchmarking since depreciation in case of assessee being newly set up, was 16.92% of its revenue, vis-a-vis depreciation of 4.85% of seven comparable companies as taken by TPO.

Held - Depreciation should be removed for calculation of net profit margin and cash PLI as prayed for by assessee was justified method.

Jamshedpur Continuous Annealing & Processing Company (P.) Ltd. v. National e-Assessment Centre - [2024] 160 taxmann.com 139 (Kolkata - Trib.)

Adjustments – Others - Pursuant to remand order of Tribunal, Assessing Officer failed to frame a final assessment order in case of assessee.

Held - There would be no justification for revenue to retain amounts which had been deposited by assessee as a pre-condition to grant of stay on demand and interim protection.

Navisite India (P.) Ltd. v. Commissioner of Income-tax-6- [2024] 160 taxmann.com 75 (Delhi)

Adjustments - Reimbursement of expenses - Assessee had reimbursed expenses to its associated enterprises. Assessee had been able to demonstrate that these expenses were incurred in respect of assessee's business interest in overseas jurisdiction.

Held - TPO was not justified in holding that arm's length price in respect of these cost to cost reimbursements should be determined at nil.

Zydus Lifesciences Ltd. v. Deputy Commissioner of Income-tax, Circle 1(1)(2) - [2024] 160 taxmann.com 37 (Ahmedabad - Trib.)

Adjustment – Royalty – Partly waived off - Assessee entered into an agreement with its overseas AEs and was to receive royalty of 3 per cent of net sales for providing 'Brand Name' along with other technical support. However, considering financial position of subsidiaries, assessee agreed to waive 2 per cent of royalty and received only 1 per cent.

Held - Addition made by Assessing Officer of balance 2 per cent royalty, which was waived by assessee was to be deleted.

Asian Paints Ltd. v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 402 (Mumbai - Trib.)

Adjustments - Working capital adjustments - Working capital adjustment was denied on ground that assessee had not demonstrated that working capital differences had impacted its profits. That segmental working capital was not disclosed in annual reports of comparable companies. Assessee submitted that it had furnished all relevant information and working before TPO/AO but it missed attention of both Revenue authorities.

Held - Matter was to be remanded back to Assessing Officer/TPO to decide issue afresh after considering information furnished by assessee.

Medtronic Engineering and Innovation Centre (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-5(1) - [2024] 160 taxmann.com 364 (Hyderabad -Trib.)

SECTION 92CA REFERENCE TO TRANSFER PRICING OFFICER

General - Assessing Officer has not made any reference to TPO.

Held – AO does not have jurisdiction to propose any transfer pricing adjustment.

Himatsingka Seide Ltd. v. Deputy Commissioner of Income-tax, Central Circle-XVI - [2024] 160 taxmann.com 601 (Kolkata - Trib.)

SECTION 115BAA
TAX ON INCOME OF CERTAIN DOMESTIC COMPANIES

Applicability – Option exercised within extended time - Assessee filed return within extended due date under section 139(1) opting provisions of section 115BAA and filed Form No. 10-IC before time prescribed in Circular No. 19/2023, dated 23-10-2023. These details of filling of Form No. 10-IC and CBDT Circular were not available at time of processing of return of income under section 143(1) with Assessing Officer.

Held - Issue was to be restored to Assessing Officer to examine and consider applicability of provisions under section 115BAA opted by assessee.

Konti Infrapower & Multiventures (P.) Ltd. v. Income-tax Officer - [2024] 160 taxmann.com 229 (Mumbai -Trib.)

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SECTION 119
INSTRUCTIONS TO SUBORDINATE AUTHORITIES

Condonation of delay – For filing of return - Assessee, a resident of USA, filed application under section 119(2)(b) seeking condonation of delay in filing return of income for assessment year 2020-21 and 2021-22. These were years when world including immediate family of assessee was affected by COVID-19 pandemic.

Held - Delay in filing return of income was to be condoned as, being a case of genuine hardship caused to assessee.

Nivas v. Commissioner of Income-Tax (IT) - [2024] 160 taxmann.com 363 (Madras)

Digital evidence – Issue revolved around was following the Digital Evidence Investigation Manual.

Held - It is mandatory to follow Digital Evidence Investigation Manual issued by CBDT while conducting search and seizure and it is not optional.

Saravana Selvarathnam Retails (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle 1(2) - [2024] 160 taxmann.com 287 (Madras)

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SECTION 132B
APPLICATION OF SEIZED OR REQUISITIONED ASSETS

Adjustment of seized assets - During course of search, cash and fixed deposit receipts [FDRs] were seized and assessee had had made an application for release/adjustment of cash and FDRs; as per section 132B(1).

Held - Assessing Officer ought to have adjusted seized cash and FDRs against tax liability while framing regular assessment and, therefore, there was no question of levy of interest under section 234B.

Nune Trimurtulu Rayudu v. Assistant Commissioner of Income-tax, Central Circle-2 - [2024] 160 taxmann.com 43 (Rajkot - Trib.)

Payment of interest on seized FDRs – FDRs were seized during search. Assessee claimed interest as provided u/s 132B(4).

Held - FDRs cannot be treated as 'money' as referred in section 132B(4)(b) and since by mere seizure of FDRs, assessee had not suffered any pecuniary loss by way of loss of interest, no interest under section 132B(4) could be granted to assessee.

Nune Trimurtulu Rayudu v. Assistant Commissioner of Income-tax, Central Circle-2 - [2024] 160 taxmann.com 43 (Rajkot - Trib.)

Restraint on repatriation of royalty or dividend - Assessee-company had deposited an amount of Rs. 230 crores with revenue and search assessment was pending.

Held - Assessee was to be permitted to repatriate Rs. 97 crores which represented royalty subject to deduction of tax ***Huawei Telecommunications (India) Company (P.) Ltd. v. Deputy Director of Income-tax (INV.)-4(3) - [2024] 160 taxmann.com 105 (Delhi)***

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**SECTION 139
RETURN OF INCOME**

Condonation of delay – By Legal heirs - Assessee after death of his father inherited his late father's business, and it was not possible for him to file return for assessment year 2017-18 as there was claim for refund on account of TDS.

Held - Delay in filing return of income by assessee either in name of his father or in his individual name ought to have been condoned.

Nileshkumar Uttamchand Rathod v. Office of the Principal Commissioner of Income-tax - [2024] 160 taxmann.com 345 (Gujarat)

Deduction through revised return – Original return filed in time - Assessee running a hospital filed revised return under section 139(5) claiming deduction under section 35AD for first time. Assessee had more than hundred beds at relevant time and it had filed original return in time.

Held - Deduction under section 35AD claimed for first time in revised return was allowable.

ACIT v. Surat Life Care (P.) Ltd.- [2024] 160 taxmann.com 239 (Surat-Trib.)

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**SECTION 144B
FACELESS ASSESSMENT**

Opportunity of hearing - Assessee had expressly requested for a personal hearing through video conferencing but AO passed draft assessment order making addition to income of assessee and also disallowing expenses without giving personal hearing.

Held - Draft assessment order was to be treated as a show-cause notice and Assessing Officer was to be directed to provide a reasonable opportunity, including a personal hearing through video conferencing, and, thereafter, issue a fresh draft assessment order.

Triumph International (India) (P.) Ltd. v. Assessment Officer, National Faceless Assessment Centre - [2024] 160 taxmann.com 637 (Madras)

**SECTION 144C
REFERENCE TO DISPUTE RESOLUTION PANEL**

Additions not proposed in Draft assessment order – Assessing Officer made additions in assessment order other than those proposed in Draft assessment order.

Held - Assessing Officer is not empowered to make any other addition which was not proposed in draft assessment order.

Mobase India (P.) Ltd. v. Assistant Commissioner of Income-tax, National e-Assessment Centre - [2024] 160 taxmann.com 165 (Delhi - Trib.)

Objections to draft assessment order - Assessing authority finalised assessment order on ground that assessee had not filed any objections to draft assessment order. Objection to draft assessment order was filed before DRP, and said objection was available on web portal.

Held - Finding of assessing authority that no objection was filed to draft assessment order was incorrect and thus assessment order was set aside and matter was remanded back.

Asseena Beegam Mohamed Ali v. Deputy Commissioner of Income-tax, (IT), Circle - [2024] 160 taxmann.com 106 (Kerala)

**SECTION 145
METHOD OF ACCOUNTING**

Estimated addition – Documentary evidences provided by assessee - AO made additions to income of assessee on account of unaccounted profit, disallowance of expenses and inflated purchases. AO was provided with requisite bills, vouchers and addresses of transacting parties. AO did not make any effort to confirm veracity of alleged bogus or inflated bills.

Held - in view of said facts AO could not make addition on account of bogus or inflated expenses on estimate basis without rejecting books of account.

Principal Commissioner of Income-tax, (Central)-1 v. Forum Sales (P.) Ltd. - [2024] 160 taxmann.com 93 (Delhi)

Net profit rate - Where Pursuant to a survey conducted at assessee's premises who was running a gold jewellery shop, AO applied net profit rate of 5% rejecting assessee's plea of adoption of a net profit rate of 2%. Assessing Officer accepted returned income, which aligned with estimated turnover, yielding a profit rate below 5%.

Held - There was no question for reducing profit rate to 2%.

Mytheenkunju Muhammed Kunju Kandathil Jewellers v. Deputy Commissioner of Income-tax, IT - [2024] 160 taxmann.com 630 (Cochin - Trib.)

Rejection of - Closing stock - Assessing Officer had considered actual cost price of damaged stock for purpose of taxation. Tribunal's decision in assessee's own case for preceding assessment year accepting disallowance to extent of 0.5 per cent of value of closing stock damaged stock.

Held - Commissioner (Appeals) was justified in restricting said disallowance to tune of 0.5 per cent of value of closing stock for purpose of valuation of closing stock.

Asian Paints Ltd. v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 402 (Mumbai - Trib.)

Revision – Sundry creditors not examined - Assessee was a works contractor and had income from various sources and Assessing Officer rejected assessee's account books and estimated net profit at 6 per cent on gross receipts. Sundry creditors of assessee were not examined by Assessing Officer.

Held - Estimation of profit on contract receipts alone would be an erroneous exercise and it caused prejudice to interest of revenue.

Commissioner of Income-tax v. Dhananjay Kumar Yadav - [2024] 159 taxmann.com 638 (Patna)

Revision – Closing stock - Assessing Officer after perusal of documents, stock register, etc. completed assessment.

Held - Commissioner erred in initiating revisional proceedings regarding under statement in closing stock.

Commissioner of Income-tax v. Gopal Sharma - [2024] 160 taxmann.com 227 (Calcutta)

Revision – Determination of profit – Construction contract - Assessee, real estate developer, recognized revenue from a project of construction of bungalows on execution of sale deed and Principal Commissioner invoked revisionary proceedings on ground that revenue should have been recognized by assessee on percentage completion method.

Held - There was no loss of tax causing prejudice to revenue due to method adopted by assessee which was accepted by AO in assessment order, twin conditions to exercise power under section 263 had not been satisfied.

Soham Buildcon v. Principal Commissioner of Income-tax - [2024] 160 taxmann.com 1250 (Ahmedabad - Trib.)

Revision - Valuation of closing stock - Principal Commissioner invoked revisionary proceedings on ground that AO had not made any inquiry with respect to method adopted by assessee for valuation of closing stock. Value of closing stock would become opening stock in next year. Same would be a tax natural exercise and there would be no loss of tax causing prejudice to revenue due to method adopted by assessee.

Held - Twin conditions to exercise power under section 263 had not been satisfied and revisionary order was to be set aside.

Soham Buildcon v. Principal Commissioner of Income-tax - [2024] 160 taxmann.com 1250 (Ahmedabad - Trib.)

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SECTION 147
INCOME ESCAPING ASSESSMENT

Non-application of mind – Reopening on wrong facts - Assessing Officer issued reopening notice on ground that assessee had not disclosed a property transaction of purchase of property from a company. Said property transaction pertained to another entity and not of assessee and Assessing Officer in order disposing objections did not deal with said factual position.

Held - Reopening notice was to be set aside.

Paranjape Schemes (Construction) Ltd. v. Deputy Commissioner of Income-tax, Circle-2(3)(1) - [2024] 160 taxmann.com 730 (Bombay)

Non-disclosure of primary facts - Opportunity of hearing – Notice sent on wrong email- Assessee did not receive subsequent notices in reassessment proceedings as same were issued to an e-mail address which was not being used by assessee's accountant.

Held - Reassessment order passed without hearing assessee was to be set aside.

SSPV Construction Consortium v. Deputy Commissioner of Income-tax -[2024] 160 taxmann.com 219 (Madras)

Receipts of Charitable entity – Alleged commercial activity - AO issued reopening notice on ground that assessee-charitable trust was engaged in commercial activity. There was not even an allegation that uncontrolled discretion or authority to open or maintain commercial institution was in object of assessee and there was not even a finding to that effect.

Held - Merely because there were certain receipts received by assessee while conducting its charitable activities, those receipts could not be treated to be income from commercial activities and thus, reopening could not be sustained.

Fine Arts Society v. Deputy Director of Income-tax (Exemptions) 1-2 - [2024] 159 taxmann.com 776 (Bombay)

SECTION 148
ISSUE OF NOTICE WHERE INCOME HAS ESCAPED ASSESSMENT

Accommodation entries – Capital gain - Borrowed satisfaction - Assessing Officer reopened assessment on ground that an information was received from ITBA that assessee had received accommodation entry of bogus LTCG to tune of certain amount from trading in penny scrip. Assessee filed Schedule-EI which contained details of exempt LTCG earned by assessee during year, and further, Assessing Officer had acted on borrowed satisfaction without recording his own satisfaction and belief that income of assessee had escaped assessment,

Held - Reassessment was to be quashed.

Reena Jain v. Income-tax Officer - [2024] 159 taxmann.com 1489 (Kolkata - Trib.)

Accommodation entry – Unsecured loan - A reopening notice was issued for reason that an information was received that assessee had taken accommodation entries of certain amount in form of unsecured loan from an entity. Materials, which had been disclosed, could neither be said to be patently false, much less irrelevant or extraneous to relevant assessment year and transactions made by assessee and also it was admitted that heavy transaction had been made between assessee and said entity.

Held - Reopening was justified.

Mahaveer Jain v. Income Tax Officer, Ward-1(2) - [2024] 160 taxmann.com 628 (Rajasthan)

Audit objection - Revenue audit raised an objection that assessment was not completed in accordance with provisions of Act. Assessing Authority had proceeded strictly in accordance with provisions of clause (ii) of Explanation 1 to section 148.

Held – Reopening could not be treated as a change of opinion because this was statutory prescription.

Sree Narayana Guru Memorial Educational and Cultural Trust v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 727 (Kerala)

Beyond four years - Partners' capital - High Court had held that where assessee had received certain amount from a firm as partner's capital and he had utilised said amount for repayment of loan. Account reflected that there was an element of income in transaction, question of escapement of income chargeable to tax did not arise and reassessment proceedings initiated against assessee beyond four years on ground that said amount was unexplained was to be set aside.

Held - SLP against order of High Court was dismissed.

Income-tax Officer v. Dhirajlal Gandhal Mehta - [2024] 160 taxmann.com 314(SC)

Change of opinion - Housing projects - Deduction claimed by assessee under section 80-IB was subject matter of consideration by Assessing Officer during original assessment proceedings. Reopening of assessment to deny deduction claimed under section 80-IB(10) merely on basis of change of opinion of Assessing Officer from that held earlier during course of assessment proceedings would not constitute justification and/or reason to believe that income chargeable to tax had escaped assessment.

Held – Reopening of assessment was not justified.

Mahavir Enterprises v. Income-tax Officer, Ward 28(2)(2) - [2024] 160 taxmann.com 38 (Bombay)

Change of opinion - Provision on non-rural advances - AO issued a reopening notice on ground that assessee had claimed provision for bad and doubtful debts on non-rural advances which was not in accordance with law. During original assessment proceedings AO had called upon assessee to give details of outstanding balance in provision for bad and doubtful debts created under section 36(1)(vii) and also raised a specific query in respect of rural branches separately and called for proof of such rural branches.

Held - Reopening of assessment was merely on basis of change of opinion and reopening was to be quashed.

Yes Bank Ltd. v. Assistant Commissioner of Income-tax, Circle 8(3)(2) - [2024] 160 taxmann.com 329 (Bombay)

Change of opinion – Income already declared - Assessing Officer issued a notice under section 148 seeking to reopen assessment being of view that there was no disclosure of LTCG on sale of shares and that assessee would have also paid brokerage/commission which had escaped assessment under section 147. Assessee had disclosed LTCG on sale of shares, purchase of equity shares of SAL, sale of those shares and gain in computation of income filed by assessee. **Held** - Reopening was merely on basis of change of opinion and, therefore, impugned notice issued under section 148 was unsustainable.

Gaurang Manhar Gandhi v. Assistant Commissioner of Income-tax-3(2)(1) - [2024] 160 taxmann.com 647 (Bombay)

Client code modification - A reopening notice was issued upon assessee on ground that an information was received that assessee had profit shifted out of certain amount and losses shifted in of certain amount resulting in net reduction in income of certain amount through Client Code Modification.

Held - Minor discrepancies in language employed by revenue and as it stood reflected in reasons provided to assessee and that which existed on record of revenue would clearly not justify for interference with impugned notice, thus, impugned reopening of assessment was justified.

Seema Gupta v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 574 (Delhi)

Full and true disclosure made - Assessing Officer issued reopening notice on ground that he had received information from DG GST that a company 'N' was involved in providing bogus accommodation entries and assessee was one of beneficiary entities who made transactions with 'N'. Assessee has disclosed in Form No.3CD that it had taken loan from 'N' along with N's PAN number and balance sheet of assessee also indicates Long Term Borrowings against 'N'.

Held - There being no failure on part of assessee to truly and fully disclose all material facts necessary for its assessment, impugned notice issued after expiry of four years should be quashed and set aside.

Feng Shui Realtors (P.) Ltd. v. Income-tax Officer - [2024] 160 taxmann.com 401 (Bombay)

Non-filing of return - Assessee had not filed a revised return of income or called upon Assessing Officer to treat original return of income as return in response to notice under section 148.

Held - Assessee was not entitled to challenge reassessment proceedings on ground that reasons for reassessment were not provided.

Swapna Manuel v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 166 (Madras)

Non disposal of objections to reopening – Alleged bogus purchases - Assessing Officer framed assessment making additions to assessee's income by way of disallowance of

purchases made by assessee on ground that same were bogus and unexplained. Objections filed by assessee against reopening of assessment were not decided by Assessing Officer.

Held - Assessment so framed was to be set aside.

Champalal Omprakash v. Income-tax Officer - [2024] 159 taxmann.com 1397 (Kolkata - Trib.)

Non disposal of objections to reopening - Assessing Officer issued on assessee a notice seeking to reopen assessment on ground that there was short disallowance while computing disallowance under section 14A and without disposing of objection raised by assessee directly passed assessment order. Assessing officer did not dispose of objections raised by assessee by passing a speaking order.

Held - Impugned assessment order deserved to be set aside.

Lucas TVS Ltd. v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 228 (Madras)

On money – Assessing Officer issued to assessee a reopening notice on ground that during search and seizure action in case of a builder firm, it was found that assessee made on-money payment for purchase of a flat. There was no material on record to indicate that assessee had paid entire amount of flat in cash.

Held - Reopening notice was unjustified.

Sumathi Janardhana Kurup v. Income tax Officer, Ward-28(3)(1) - [2024] 160 taxmann.com 40 (Bombay)

Sale consideration – Addition based on photocopy – AO issued reopening notice and made addition to income of assessee on account of purchase of land from undisclosed sources. Entire foundation of reopening of assessment and addition to income was laid on basis of photocopy of an alleged agreement to sell property, which was not supported by any other evidence.

Held - Addition was unjustified and was to be deleted.

Principal Commissioner of Income-tax v. Smt. Rashmi Rajiv Mehta - [2024] 160 taxmann.com 723 (Delhi)

Valuation of shares – Section 56(2)(viib) - During original assessment proceedings, Assessing Officer had raised query on assessee-company regarding large share premium received during year and assessee had replied to it. Assessment was reopened on ground that there was vast difference in valuation adopted by assessee and performance and valuations had been made with projections that were arbitrary figures merely to suit value of shares adopted at time of transfer to avoid taxation under section 56(2)(viib) of Act.

Held – Reassessment was not unjustified.

GRI Towers India (P.) Ltd. v. Union of India - [2024] 160 taxmann.com 215 (Bombay)

Verification of transactions - Share Transactions – Assessing Officer, upon receiving CIB information indicating significant share transactions by assessee, issued a notice under section 148 to reopen assessment. Reasons recorded showed that AO only wanted to verify more details regarding share transaction.

Held – Verification of transactions could not substitute for reasons and would not justify reopening of assessments.

Chandni J. Ahuja v. Union of India - [2024] 160 taxmann.com 404 (Bombay)

SECTION 148A
CONDUCTING INQUIRY, PROVIDING OPPORTUNITY BEFORE ISSUE OF NOTICE UNDER
SECTION 148

Incorrect information – Purchase of property - Assessing Officer reopened assessment in case of assessee-housewife, in order to verify source of payment for purchase of property. Assessee had not made any payment for purchase of property.

Held - Reopening notice was to be quashed and set aside.

Kalpita Arun Lanjekar v. Income Tax Officer, Ward-28(2)(1) - [2024] 160 taxmann.com 726 (Bombay)

Incorrect information - Fictitious loss - Pursuant to a search and seizure operation in case of a group company, assessee received a notice issued under section 148A(b), in which it was alleged that as per information uploaded on Insite Portal, assessee had carried out transactions in penny script and booked fictitious losses. However, assessee gave evidence that information was incorrect and in fact it had made a profit. Assessing Officer had not reflected on information submitted by assessee and passed orders.

Held - Impugned order under section 148A(d) and notice under section 148 were to be quashed and set aside.

Banas Finance Ltd. v. Assistant Commissioner of Income-tax, Central Circle-8(3) - [2024] 160 taxmann.com 559 (Bombay)

Second notice based on Change of opinion - Assessing Officer after considering submissions of assessee passed order under section 148A(d) dropping re-assessment proceedings for relevant assessment year. Subsequently AO issued another notice under section 148A(b) and passed order under section 148A(d) taking a complete contrary stand.

Held – AO could not have changed that opinion without any basis and, thus, subsequent notice issued under section 148A(b) and order passed under section 148A(d) taking a complete contrary stand was to be quashed.

Siemens Ltd. v. Deputy Commissioner of Income-tax - [2024] 160 taxmann.com 243 (Bombay)

**SECTION 149
TIME LIMIT FOR NOTICE**

Time limit for reopening - Validity of a notice must be judged on basis of law existing as on date on which notice was issued under section 148, which in instant case was 31-7-2022, by which time Finance Act, 2021 was already on statute and in terms thereof, no notice under section 148 for assessment year 2014-15 could be issued on or after 1-4-2021 based on first proviso to section 149.

Held - In view of unamended section 149(1)(b) impugned reopening notice issued on 31-7-2022 was barred by limitation.

Godrej Industries Ltd. v. Assistant Commissioner of Income-tax, Circle 14(1)(2) - [2024] 160 taxmann.com 13 (Bombay)

**SECTION 151
SANCTION FOR ISSUE OF NOTICE**

Approval - Principal Commissioner while granting approval under section 151 simply wrote 'Yes' without specifically noting his approval.

Held - Such approval could not be considered to be a valid approval.

Principal Commissioner of Income-tax-7 v. Pioneer Town Planners (P.) Ltd. - [2024] 160 taxmann.com 652 (Delhi)

Specified authority - Notice issued under section 148 for assessment year 2016-17 on 1-7-2022 referred to prior approval of Principal Commissioner which was relatable to section 151(i) and not to section 151(ii).

Held - Said notice and all consequential actions thereto were to be quashed and set aside.

Shri Vardhaman Multi State Cooperative Credit Society Ltd. v. Income tax Officer - [2024] 160 taxmann.com 220 (Bombay)

SECTION 153A
ASSESSMENT IN CASE OF SEARCH OR REQUISITION

Unabated assessment – No Incriminating material – No incriminating material was found during search. Addition was made to income of assessee in respect of certain accommodation entries received by it, in assessment made under section 153A on basis of statement recorded under section 132(4) of a third person.

Held – Addition made without providing an opportunity to cross-examine witness was not justified.

Divya Exim (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 1370 (Delhi - Trib.)

Unabated assessment – No Incriminating material - AO made addition under section 153A in respect of share capital amount received by assessee. No incriminating material was found or seized during course of search in respect of addition towards said share capital amount and year under consideration was unabated year considering date of conduct of search within meaning of section 153A.

Held - No addition could be made to income of assessee and thus same was to be deleted.

Deputy Commissioner of Income-tax v. Arunachal Pradesh Power Corporation (P.) Ltd. - [2024] 159 taxmann.com 1369 (Guwahati - Trib.)

SECTION 153B
TIME LIMIT FOR COMPLETION OF ASSESSMENT UNDER SECTION 153A

Time limit for passing order - Limitation period as per provisions of section 153B for assessment year 2007-08 expired on 31-3-2014. Assessment order was passed by Assessing Officer on 27-2-2015.

Held – The assessment order was barred by limitation under section 153B and, therefore, liable to be quashed.

Deputy Commissioner of Income-tax, Central Circle-2 v. Arvind N Nopany - [2024] 160 taxmann.com 8 (Ahmedabad - Trib.)

SECTION 153C
ASSESSMENT OF INCOME OF ANY OTHER PERSON

Recording of satisfaction - Satisfaction note drawn by Assessing Officer of assessee was a carbon copy of note of Assessing Officer of searched person.

Held - As Assessing Officer of assessee independently recorded satisfaction fulfilling requirements of section 153C, it does not warrant rejection.

Bhagwandas Rupchand Parwani v. Assistant Commissioner of Income-tax, Circle1(1)(1) - [2024] 160 taxmann.com 7 (Gujarat)

DIN not mentioned - Assessee challenged section 153C proceedings due to absence of DIN in satisfaction note as per CBDT Circular No.19/2019. Revenue provided DIN in subsequent communication, meeting CBDT requirement.

Held - Objection raised by assessee could not be upheld.

Bhagwandas Rupchand Parwani v. Assistant Commissioner of Income-tax, Circle 1(1)(1) - [2024] 160 taxmann.com 7 (Gujarat)

Writ jurisdiction – Satisfaction note not provided along with notice - Assessee had filed writ petition challenging initiation of proceedings under section 153C contending that no satisfaction note was provided along with notice under section 153C. Satisfaction note of Assessing Officer was served upon assessee subsequent to notice under section 142(1).

Held - Assessee should have raised all possible objections before Assessing Officer during course of assessment proceedings instead of filing writ petition.

Shyamlal Rupchand Parwani v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 242 (Gujarat)

Writ jurisdiction – To block assessment - Assessee political party filed writ petition challenging validity of notice issued under section 153C on ground that assessment which was proposed to be undertaken for assessment years 2014-15, 2015-16 and 2016-17 would be barred by period of limitation as raised by virtue of first proviso to section 153C. Writ petition was filed only a few days before time for completion of assessment would expire.

Held - There was no justification to interdict assessment proceedings at this belated stage by invoking jurisdiction under article 226 of Constitution.

Indian National Congress v. Deputy Commissioner of Income-tax, Central-19 - [2024] 160 taxmann.com 606 (Delhi)

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**SECTION 154
RECTIFICATION OF MISTAKE**

Rectification - Scope - Assessee filed original return claiming no refund. Assessee subsequently filed revised return claiming refund of tax of certain amount which was not sent to CPC within due date. Assessee had put figures in wrong column in its original return instead of appropriate column which was a mistake apparent from record.

Held - Case was to be remanded back to Assessing Officer to rectify said mistake in original return.

TSO JHE Khangsar Charity Hospital Society v. Income-tax Officer, Exemption - [2024] 159 taxmann.com 1392(Bangalore - Trib.)

Rectification – Subsequent to Supreme Court order - Pursuant to order of AAR which was overruled by Supreme Court, assessee filed rectification application seeking refund of taxes paid under protest. As per circular dated 17-11-1971, an assessee is entitled to seek rectification pursuant to interpretation of law by Supreme Court.

Held - Impugned order rejecting rectification application was to be set aside and revenue was to be directed to refund taxes paid by assessee.

Citrix Systems Asia Pacific Proprietary Ltd. v. Deputy Commissioner of Income-tax, IT Circle 1(1) - [2024] 160 taxmann.com 625 (Karnataka)

**SECTION 156
NOTICE OF DEMAND**

DIN – Uploaded on Portal - Assessment order and intimation bearing DIN were uploaded on revenue's portal.

Held - Assessee could not challenge validity of assessment order for lack of DIN.

Mytheenkunju Muhammed Kunju Kandathil Jewellers v. Deputy Commissioner of Income-tax, IT - [2024] 160 taxmann.com 630 (Cochin - Trib.)

SECTION 158BD
UNDISCLOSED INCOME OF ANY OTHER PERSON

Recording of satisfaction - Assessing Officer had not prepared a satisfaction note either before or along with or even after assessment proceedings as mandatorily required under section 158BD.

Held - Entire proceedings initiated by Assessing Officer to pass an assessment order under section 158BC was illegal and liable to be set-aside.

Ashok Vardhan Kothari v. Commissioner of Income-tax, Central-II - [2024] 160 taxmann.com 69 (Calcutta)

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**SECTION 159
LEGAL REPRESENTATIVES**

Appeal by legal representative – Registration on Income Tax Portal - After death of an assessee, legal representative must register on Income Tax Portal by submitting PAN of deceased assessee along with his PAN as legal representative and produce death certificate of deceased assessee together with his legal heirship certificate and only after such compliance appeal against assessment order can be numbered and heard.

P.S. Subramanian v. Income-tax Officer - [2024] 160 taxmann.com 232 (Madras)

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**SECTION 194A
INTEREST OTHER THAN "INTEREST ON SECURITIES"**

Interest on delayed payment to broker - Assessee-company paid interest on delayed payment to share broker for purchase of shares without deduction of tax at source.

Held - Interest amount had not been incurred by assessee on any amount borrowed during normal course of business, same could not be considered as interest under section 2(28A) and, consequently, provisions of sections 194A and 40(a)(ia) would not apply on same.

Standard Financial Consultants (P.) Ltd. v. Deputy Commissioner of Income-tax. - [2024] 159 taxmann.com 1488 (Kolkata - Trib.)

**SECTION 194H
COMMISSION OR BROKERAGE**

Sale of pre-paid products - Assessee entered into agreements with distributors/franchisees for sale of their prepaid products. Contractual obligations of distributors/franchisees did not reflect a fiduciary character of relationship, or business being done on principal's account.

Held – Assessee would not be under a legal obligation to deduct tax at source on income/profit component in payments received by distributors/franchisees from third parties/customers, or while selling/transferring pre-paid coupons or starter-kits to distributors.

Bharti Cellular Ltd. v. Assistant Commissioner of Income-tax, Circle 57 - [2024] 160 taxmann.com 12 (SC)

Payment to distributors - High Court had held that where assessee, a computer and peripherals manufacturer, supplied products to distributors and Assessing Officer deemed payments to distributors as 'commission'. Payment from distributor to assessee had no link with further sale made by distributor, said payment could not be treated as commission or brokerage as described in Explanation to section 194H.

Held - SLP against order of High Court was dismissed.

Commissioner of Income-tax v. Acer India (P.) Ltd. - [2024] 160 taxmann.com 661 (SC)

**SECTION 194-I
RENT**

Storage charges - Assessee had hired storage tanks of various parties for handling import of oil and paid them storage charges. Storage tanks in question did not qualify either as land or as building within meaning of section 194-I.

Held - Payments in question for hiring storage tank were not liable for deduction of tax at source under provisions of section 194-I.

Commissioner of Income-tax (TDS) v. B. Arunkumar Trading Ltd. - [2024] 160 taxmann.com 164 (Bombay)

**SECTION 194J
FEES FOR PROFESSIONAL OR TECHNICAL SERVICES**

Consultancy charges to doctors - Assessee-company, engaged in business of establishing, maintaining and running hospital and multi-speciality healthcare facilities, made payment of consultancy charges to doctors.

Held - Payment would be covered under section 194J and not under section 192.

ACIT(TDS) v. Artemis Medicare Services Ltd. - [2024] 159 taxmann.com 1368 (Delhi - Trib.)

**SECTION 197
CERTIFICATE FOR DEDUCTION AT LOWER RATE**

Certificate issued by department – On undertaking issued by department - Assessee filed writ petition challenging rejection of its application under section 197 and High Court disposed of writ petition on basis of revenue's undertaking that order of rejection to be withdrawn and assessee's application would be reconsidered. Certificates under section 197 had already been given to assessee.

Held - There was no reason to interfere with impugned order passed by High Court and, accordingly, SLP was to be dismissed.

Deputy Commissioner of Income-tax (TDS) v. Sodexo SVC India (P.) Ltd. - [2024] 160 taxmann.com 469 (SC)

**SECTION 199
CREDIT FOR TAX DEDUCTED**

Year of allowance of TDS credit – Rule 37BA - Assessee-company received mobilization advance during financial year 2016-17 but offered income on said advance in subsequent years.

Held - Assessee was to be allowed TDS credit on said advance in relevant assessment year.

Deputy Commissioner of Income-tax, Circle-2(1)(1) v. Cicon Engineers (P.) Ltd. - [2024] 160 taxmann.com 142 (Bangalore - Trib.)

**SECTION 201
ASSESSEE IN DEFAULT**

Assessee in default - Assessee-company made provision for expenses and had voluntarily disallowed same under section 40(a)(ia) on ground that said expenses were not subjected to

TDS. Assessee had not credited corresponding liability for expenses to account of concerned vendors who had rendered services, payees became non-identifiable.

Held - There was no question of applicability of TDS provisions on same and that merely because assessee had voluntarily disallowed expenses under section 40(a)(ia) in return, same would not automatically enable AO to treat it as 'assessee in default' under section 201(1) and consequentially levy interest under section 201(1A).

ACIT (TDS) v. Artemis Medicares Services Ltd. - [2024] 159 taxmann.com 1368 (Delhi - Trib.)

SECTION 220
WHEN TAX PAYABLE AND WHEN ASSESSEE DEEMED IN DEFAULT

Blanket Directions by Supreme Court – Under Article 142 –

Held - SC cannot, under Article 142, issue blanket directions to HCs to decide all cases in which an interim stay has been granted on a day-to-day basis within a time-frame.

High Court Bar Association v. State of U.P. - [2024] 160 taxmann.com 32 (SC)

Stay of demand – Adjustment of refunds - Dy. Commissioner without considering application filed by assessee under section 220(6) proceeded to adjust demand raised for impugned assessment year against refunds which were due and payable to assessee.

Held - Matter was to be remanded to Dy. Commissioner for reconsidering application.

National Association of Software and Services Companies (Nasscom) v. Deputy Commissioner of Income-tax (Exemption), Circle 2(1) - [2024] 160 taxmann.com 728 (Delhi)

Stay of demand – Disposal of appeal by CIT Appeals – Appeal was pending before CIT (Appeals).

Held - In view of Instruction No. 1914 issued under section 220 as read with OM [F. No. 404/72/93-ITCC], where appeal is pending before Commissioner (Appeals), it should be decided expeditiously without insisting on recovery of demand and demand shall be deemed to be stayed without depositing pre-deposit of 20 per cent.

Anheuser BuschInBev India Ltd. v. Commissioner of Income-tax (TDS)-2 - [2024] 160 taxmann.com 594 (Punjab & Haryana)

SECTION 226
OTHER MODES OF RECOVERY

Stay on recovery - Delay in determining appeal was not attributable to Revenue.

Held - ITAT declined to stay recovery of demand against Congress Party pending appeal as delay in determining appeal is not attributable to Revenue.

Indian National Congress All India Congress Committee v. Deputy Commissioner of Income Tax - [2024] 160 taxmann.com 260 (Delhi - Trib.)

Question of recovery - Issue with regard to recovery had been put to rest in earlier two rounds of litigation and assessee was trying to re-agitate issue before High Court by filing a petition. Held - It would not be maintainable and hence deserved to be dismissed.

Arth Rural Connect Services Ltd. v. Union of India - [2024] 160 taxmann.com 558 (Madhya Pradesh)

SECTION 237
REFUNDS

Withholding of refund- On directions of Commissioner (Appeals), AO determined amount of refund to be paid to assessee. However, assessee was deprived of its right to get back refund till date on ground of inability of revenue to verify record to determine whether amount in question was paid to assessee or not.

Held - In absence of any fault being attributed to assessee, lack of verification by Assessing Officer of their own records could not be a ground to deny refund.

Clix Capital Services (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 160 taxmann.com 6 (Delhi)

SECTION 244A
INTEREST ON REFUNDS

Additional interest - Revenue had already granted interest under section 244A (1), without attributing any reason of delay to assessee.

Held - There was no cogent reason for not granting additional interest as mandatorily prescribed under section 244A(1A).

Genpact India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 10(1) - [2024] 160 taxmann.com 268 (Delhi)

Granting of refund – Portal error - Assessee filed a writ petition seeking refund due to a portal error and even after rectification, refund remained pending.

Held - CPC was directed to ensure that refund was credited to assessee's account and failure to comply would result in issuance of a physical cheque/pay order for entire refund along with interest under section 244A.

Macrotech Developers Ltd. v. Principal Commissioner of Income-tax, Central-4 - [2024] 160 taxmann.com 254(Bombay)

SECTION 245F
POWER AND PROCEDURE OF SETTLEMENT COMMISSIONER

Filing of application – Limitation period extended - During pendency of assessment proceedings, assessee filed application before Settlement Commission under section 245C on 30-3-2021. CBDT's press release gave taxpayers an opportunity to file application for settlement by 30-9-2021.

Held - Application filed by assessee under section 245C would be an eligible application though filed after 31-1-2021 and same was required to be considered as pending application for adjudication on merits.

Sanjay Sevantilal Shah v. Interim Board for Settlement (IBS)-14 - [2024] 160 taxmann.com 255 (Gujarat)

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**SECTION 246
APPEALABLE ORDERS**

Writ – Alternate remedy existed - Assessee filed writ petition to challenge orders under sections 148A(d) and 147. Impugned assessment order provided detailed reasoning and suffered from no procedural irregularity/

Held - High Court could not reappreciate those evidences when alternative remedy by way of appeal was available to assessee.

GSP Piling Constructions (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-4(3) - [2024] 160 taxmann.com 365(Calcutta)

**SECTION 250
PROCEDURE IN APPEAL**

Ex parte order – Assessee failed to respond to notices - Assessee failed to respond to notices for prosecution of his appeal with evidences and hence appeal was dismissed ex parte by Commissioner (Appeals).

Held - Keeping in view principles of natural justice, matter was to be remanded back to file of Commissioner (Appeals) and he was to be directed to afford assessee another opportunity of being heard.

Vattikuti Veera Venkata Prasad v. Income-tax Officer - [2024] 160 taxmann.com 1252 (Visakhapatnam - Trib.)

Natural justice – Opportunity of hearing - Commissioner (Appeals) passed an ex parte order upholding addition on account of claim of derivative loss, loss of F&O, securities transaction and travelling and conveyance expenses made by Assessing Officer without giving opportunity of being heard to assessee.

Held - Matter was to be remanded back to Commissioner (Appeals) for his objective and meritorious observations and findings on submissions made by assessee.

Wrinkle Marketing (P.) Ltd. v. Income-tax Officer - [2024] 159 taxmann.com 1395 (Kolkata - Trib.)

Natural justice – Opportunity of hearing - Assessing Officer completed assessment and disallowed a certain sum as income from other sources under section 56(2)(vii) and during appeal proceedings before CIT(A), assessee's husband expired and consequently notices were issued and served on assessee through email, being wife and legal heir, but no response was received from assessee and Commissioner (Appeals) dismissed appeal of assessee ex parte. Assessee pleaded for another opportunity of being heard.

Held - In view principles of natural justice, matter was remitted back to file of Commissioner (Appeals).

Smt. Vardhanapu Manikumari v. Income-tax Officer, Ward-1 - [2024] 160 taxmann.com 41 (Visakhapatnam - Trib.)

Natural justice – Opportunity of hearing - Excess stock - CIT (Appeals) upheld order of AO making addition under section 69 on account of excess stock found at factory premises of assessee-company during search. Assessee was not given sufficient opportunity to participate and prosecute matter before first appellate authority.

Held - Order passed by CIT (Appeals) was to be set aside and matter was to be restored to file of CIT (Appeals) for readjudication.

Sarda Metals & Alloys Ltd. v. Assistant Commissioner of Income-tax - [2024] 159taxmann.com 1377 (Raipur - Trib.)

Natural justice – Opportunity of hearing - Some grounds were not disposed off - CIT (Appeals) passed an ex-parte order upholding assessment order of taxing surrendered income by assessee under section 115BBE without considering ground of appeal raised by assessee and assessee also claimed that for some of dates of hearing before CIT (Appeals) notice was not received and on some of dates adjournment petition was filed.

Held - Order of CIT (Appeals) was to be set aside and matter was to be remanded back for de novo adjudication.

Ramson Remedies v. Assistant Commissioner of Income-tax - [2024] 159 taxmann.com 1376 (Amritsar - Trib.)

Non prosecution of appeal - Dismissal of appeal – Order to be passed on merit - Commissioner (Appeals) has to decide appeal on merit by passing a speaking order.

Held – CIT (Appeals) does not have any power to dismiss appeal for non-prosecution.
MedaRaja Kishor Raghuramy Reddy v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 416 (Panaji - Trib.)

SECTION 251 POWERS OF COMMISSIONER (APPEALS)

Condonation of delay - Appeal was filed by assessee before Commissioner (Appeals) with a delay of 335 days against denial of claim of relief under section 90 in respect of tax paid by assessee in Norway on income earned in Norway. Assessee had explained that it took time to get documents related to details of all tax paid from Norway particularly considering situation emanating from COVID-19 pandemic.

Held - Impugned delay in filing appeal was to be condoned and appeal was to be decided on merits for relief under section 90.

Hanumantappa Giriyaapur Manjunatha v. Income-tax Officer - [2024] 159 taxmann.com 1496 (Bangalore - Trib.)

SECTION 253
APPEALS TO APPELLATE TRIBUNAL

Appeal Fee – In case of Penalty appeal.

Held - While filing penalty appeal before Tribunal, assessee was required to remit appeal fees of Rs.500 only.

S. Sagar Enterprise v. Deputy Commissioner of Income-tax, Central Circle-1(1) - [2024] 159 taxmann.com 774 (Mumbai - Trib.)

Condonation of delay - Assessee filed application against revision order of Principal Commissioner with a delay. Delay was caused due to preoccupation of finance department of assessee-company in relation to closing of accounts and preparation of annual reports for year 2018-19 and there was no negligence or laxity attributable to assessee for delay in filing appeal.

Held - Delay was to be condoned.

Tiki Tar Industries Baroda Ltd. v. Principal Commissioner of Income-tax - [2024] 159 taxmann.com 1691 (Ahmedabad - Trib.)

Condonation of delay - Assessee filed appeal against order of Commissioner (Appeals) with delay of 51 days and submitted that delay in filing appeal was due to unfortunate and unforeseen circumstances surrounding her health along with doctor's certificate in support of her submission.

Held - There was a reasonable cause for assessee to file appeal belatedly delay was to be condoned and appeal was to be admitted for hearing in interest of justice.

Smt. Vardhanapu Manikumari v. Income-tax Officer, Ward-1 - [2024] 160 taxmann.com 41 (Visakhapatnam - Trib.)

Condonation of delay: Where Assessee filed appeal before Tribunal with a delay of 58 days and submitted that delay in filing appeal belatedly was not as a result of any negligence or lack of diligence but solely due to unfortunate and unforeseen circumstances surrounding his health and he attached doctors' certificate in support of his petition.

Held - Delay was to be condoned.

Vattikuti Veera Venkata Prasad v. Income-tax Officer - [2024] 160 taxmann.com 1252 (Visakhapatnam - Trib.)

Connected appeals – To be heard together - Property transactions - Assessee claimed to have received advance in cash for sale of property. AO treated said advance taxable under section 56(2)(ix). AO in case of buyer had treated said advance as unexplained money and issues involved in these appeals were inextricably linked to additions made by department in hands of buyer of property.

Held - These appeals could not be independently decided and therefore, these appeals were to be decided along with other connected appeals pending in case of buyer of property and her associates at first appellate authority level itself.

Lakshmi Silvers v. Deputy Commissioner of Income-tax - [2024] 160 taxmann.com 405 (Chennai - Trib.)

**SECTION 254
ORDERS OF APPELLATE TRIBUNAL**

Rectification of mistake – Typographical and inadvertent errors - Tribunal while passing order made a typographical and inadvertent errors by misstating deduction amounts., it rightly acknowledged errors and issued a corrigendum to address them.

Held – Rectification of mistake is justified.

Tata Steel Ltd. v. Deputy Commissioner of Income-tax-2(3)(1) - [2024] 160 taxmann.com 140 (Mumbai - Trib.)

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SECTION 260A
APPEAL TO HIGH COURT

Condonation of delay - Department sought condonation of delay of 879 days in filing appeal on ground that original certified copy of Tribunal's order was misplaced.

Held - There was no proper explanation given for inordinate delay, application for condonation of delay deserved to be dismissed.

Principal Commissioner of Income-tax v. Britannia Industries Ltd. - [2023] 156 taxmann.com 737 (Calcutta)

Condonation of delay - High Court had held that where revenue filed notices of motion seeking condonation of delay of 286 days in seeking to set aside self-operating order passed by Prothonotary & Senior Master rejecting revenue's appeal for non-removal of office objections, since affidavits-in-support were bereft of any particulars and there was no explanation for delay, notices of motion were to be dismissed.

Held - SLP against order of High Court was dismissed.

Principal Commissioner of Income-tax v. Akruiti City Ltd. - [2024] 160 taxmann.com 343 (SC)

Monetary limit - Tax effect involved in appeal was below limit prescribed by Circular No. 17/2019 dated 8-8-2019.

Held - Appeal was to be dismissed as per said circular without going into merits of case.

Commissioner of Income-tax v. Rakshit Transport - [2024] 160 taxmann.com 731 (Calcutta)

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SECTION 263
REVISION OF ORDERS PERJUDICIAL TO REVENUE

Construction contract - Determination of profit – Assessee, real estate developer, recognized revenue from a project of construction of bungalows on execution of sale deed and Principal Commissioner invoked revisionary proceedings on ground that revenue should have been recognized by assessee on percentage completion method.

Held - There was no loss of tax causing prejudice to revenue due to method adopted by assessee which was accepted by AO in assessment order, twin conditions to exercise power under section 263 had not been satisfied.

Soham Buildcon v. Principal Commissioner of Income-tax - [2024] 160 taxmann.com 1250 (Ahmedabad - Trib.)

Deduction allowable under other sub-section - In assessment order Assessing Officer allowed deduction under section 80-IB(11) claimed by assessee. However, he overlooked that assessee was not eligible for deduction under section 80IB(11) rather it was eligible for deduction under section 80-IB(11A).

Held - Impugned order passed by Assessing Officer was erroneous as well as prejudicial to interest of revenue, and therefore, same was to be set aside and revisionary power was rightly invoked by Principal Commissioner under section 263.

Kishan Cold Storage v. Principal Commissioner of Income-tax - [2024] 159 taxmann.com 1221 (Rajkot - Trib.)

Deduction neither claimed nor allowed - Interest – Assessee co-operative bank had not claimed deduction under section 80P(2)(a)(i) or 80P(2)(d) on interest income earned by it from various banks including co-operative banks and had showed same as income from other sources and accordingly Assessing Officer had not granted any deduction on said interest income.

Held - Impugned revision under section 263 on ground that Assessing Officer ought to have disallowed deduction under section 80P(2)(d) in respect of interest income on banks including co-operative banks was unjustified.

Pane Mangalore RSS Bank Panemangalore RSS Ltd. v. Income Tax Officer - [2024] 159taxmann.com 1483 (Bangalore - Trib.)

Doctrine of merger - PCIT initiated proceedings under section 263 to impose penalty under section 271(1)(c) on account of gold found during search operation in assessee's son's residence. Tribunal allowed appeal of revenue, confirmed penalty levied by AO and High Court merely gave a fresh opportunity to assessee to explain case afresh.

Held - It could not be said there was merger and, thus, order passed by the PCIT invoking section 263 could not be interfered.

R. Revathy v. Assistant Commissioner of Income-tax, Central Circle1(2) - [2024] 160 taxmann.com 464 (Madras)

Enquires made by AO – Closing stock - Assessing Officer after perusal of documents, stock register, etc. completed assessment.

Held - Commissioner erred in initiating revisional proceedings regarding under statement in closing stock.

Commissioner of Income-tax v. Gopal Sharma - [2024] 160 taxmann.com 227 (Calcutta)

Enquires made by AO - Non-performing assets - Assessing Officer during assessment proceeding issued a questionnaire to assessee regarding deduction on account of provision for non-performing assets and loss on interest rate swap and same was replied by assessee.

Held - It was not a case where no enquiry whatsoever had been conducted by Assessing Officer with respect to claims under consideration and, thus, revision order passed under section 263 was not sustainable.

Principal Commissioner of Income-tax v. Clix Finance India (P.) Ltd. - [2024] 160 taxmann.com 357 (Delhi)

Enquires made by AO – Valuation of intangibles - Assessing Officer had inquired into all probable aspects of valuation of intangible assets and consequent claim of depreciation thereon by assessee and moreover assessee's basis of valuation of intangible assets was as per that prescribed by AS-26.

Held - Revisionary proceedings were not valid.

Accumax Lab Devices (P.) Ltd. v. Principal Commissioner of Income-tax - [2024] 160 taxmann.com 240 (Ahmedabad - Trib.)

Interest income – Assessee a co-operative society claimed deduction under section 80P(2)(d) on interest income earned from deposits placed with a co-operative bank and Assessing Officer after due examination of facts allowed said claim.

Held - Principal Commissioner was not justified in invoking revisionary jurisdiction merely on ground that interest income was not earned from any other co-operative society but from scheduled commercial banks.

Jagadhri Co-operative Marketing Cum Processing Society Ltd. v. Principal Commissioner of Income-tax - [2024] 159 taxmann.com 1253 (Chandigarh - Trib.)

Limited Scrutiny - No enquiry - Agricultural receipts and issue of adequacy of agricultural expenditure were not verified by Assessing Officer while passing original assessment under section 143(3) under limited scrutiny.

Held - Principal Commissioner was not justified in exercising provisional jurisdiction under section 263.

Vijay Rajnikant Patel v. Principal Commissioner of Income-tax-3 - [2024] 160 taxmann.com 178 (Ahmedabad - Trib.)

No enquiry made - Sundry creditors not examined - Assessee was a works contractor and had income from various sources and Assessing Officer rejected assessee's account books and estimated net profit at 6 per cent on gross receipts. Sundry creditors of assessee were not examined by Assessing Officer.

Held - Estimation of profit on contract receipts alone would be an erroneous exercise and it caused prejudice to interest of revenue.

Commissioner of Income-tax v. Dhananjay Kumar Yadav - [2024] 159 taxmann.com 638 (Patna)

Valuation of closing stock - Principal Commissioner invoked revisionary proceedings on ground that AO had not made any inquiry with respect to method adopted by assessee for valuation of closing stock. Value of closing stock would become opening stock in next year. Same would be a tax natural exercise and there would be no loss of tax causing prejudice to revenue due to method adopted by assessee.

Held - Twin conditions to exercise power under section 263 had not been satisfied and revisionary order was to be set aside.

Soham Buildcon v. Principal Commissioner of Income-tax - [2024] 160 taxmann.com 1250 (Ahmedabad - Trib.)

Valuation of Share – Rights Share - Rule 11UA - Assessee-company issued shares at premium and justified premium received by calculating fair market value of shares under rule 11UA. Principal Commissioner invoked revisionary proceedings on ground that FMV computed by assessee was incorrect and held that excess amount received by assessee would be its income as per section 56(2)(viib).

Held - Shares issued by assessee were right shares, 56(2)(viib) could not be invoked on a rights issue, and revisionary order was to be set aside.

Tiki Tar Industries Baroda Ltd. v. Principal Commissioner of Income-tax - [2024] 159 taxmann.com 1691(Ahmedabad - Trib.)

SECTION 264 REVISION OF OTHER ORDERS

Natural justice - Opportunity of hearing – Not provided - Revision application filed by assessee under section 264 was rejected by PCIT without affording a fair opportunity of hearing,

Held – Revision order deserved to be set aside.

Smt. Ritu Mittal v. Income Tax Officer - [2024] 160 taxmann.com 111 (Allahabad)

**SECTION 270A
PENALTY FOR UNDER-REPORTING AND MISREPORTING OF INCOME**

Under reporting or mis reporting – Facts disclosed - Fact of earning interest income and miscellaneous income had been duly disclosed by assessee in its accounts and in original return with full details.

Held - It could not be alleged that assessee was guilty of under-reporting and/or misreporting of income penalty under section 270A was not exigible.

Greenwoods Govt. Officers Welfare Society v. Deputy Commissioner of Income-tax - [2024] 160 taxmann.com 237 (Delhi - Trib.)

**SECTION 270AA
IMMUNITY FROM IMPOSITION OF PENALTY ETC.**

Condonation of delay - Competent Authority rejected assessee's application filed under section 270AA requesting for immunity from imposition of penalty on grounds that assessee paid amount demanded beyond period specified and application was not made within specified period.

Held - Gross total income and total tax liability disclosed by assessee in return were accepted in assessment order, delay of 30 days in filing application deserved to be condoned.

Natarajan Anandh Kumar v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 637 (Madras)

**SECTION 271
FAILURE TO FURNISH RETURNS, COMPLY WITH NOTICES, CONCEALMENT OF INCOME ETC.**

Defective Notice – Limb under which penalty was proposed was not stated - Show cause notice proposing penalty upon assessee did not specify as to under which limb of section 271(1)(c), penalty was to be levied upon assessee.

Held - Notice itself was bad in law and consequently penalty levied was to be set aside.

S. Sagar Enterprise v. Deputy Commissioner of Income-tax, Central Circle-1(1) - [2024] 159 taxmann.com 774 (Mumbai - Trib.)

Time limit – For levying penalty - Within six months from end of month in which Appellate Tribunal passed orders, Assessing Officer became functus officio and he had no jurisdiction to pass second penalty order beyond period prescribed under section 275(1).

Held - Assessing Officer having passed second penalty order beyond period prescribed under section 275(1), said order was to be set aside.

Kamal Enterprises and New Life Hospital v. Deputy Commissioner of Income-tax, Circle-9(1) - [2024] 160 taxmann.com 39 (Hyderabad - Trib.)

Disallowance of claim - Assessee preferred a claim which was not acceptable to revenue.
Held - Assessee could not be visited with proceedings under section 271(1)(c), unless and until twin requirements under section 271(1)(c) were satisfied.

Kamal Enterprises and New Life Hospital v. Deputy Commissioner of Income-tax, Circle-9(1) - [2024] 160 taxmann.com 39 (Hyderabad - Trib.)

Disallowance of claim - Pursuant to certain additions made in total income of assessee, penalty under section 271(1)(c) was also levied upon assessee. Assessee had succeeded in getting three out of four additions deleted in quantum proceedings and in respect of fourth addition also Tribunal noted that as assessee had neither furnished inaccurate particulars nor concealed income.

Held - Penalty could not be levied on that score, penalty under section 271(1)(c) levied upon assessee was to be deleted.

Commissioner of Income-tax (International Taxation) v. Standard Chartered Grindlays (P.) Ltd. - [2024] 159 taxmann.com 1473 (Delhi)

No variation in income - When Returned income and assessed income are same.

Held - Penalty u/s. 271(1)(c) cannot be levied.

Haresh Ghanshyamdas Makhija v. Income Tax Officer, Ward 2(2) - [2024] 160 taxmann.com 326 (Mumbai - Trib.)

**SECTION 271A
FAILURE TO KEEP, MAINTAIN OR RETAIN BOOKS ACCOUNTS, DOCUMENTS, ETC.**

Penalty levied – For non-maintenance of books of account - Once Penalty was u/s 271A has been levied for non-maintenance of books of accounts.

Held - Penalty u/s. 271B can be levied.

Haresh Ghanshyamdas Makhija v. Income Tax Officer, Ward2(2) - [2024] 160 taxmann.com 326 (Mumbai - Trib.)

**SECTION 271B
FAILURE TO GET ACCOUNTS AUDITED**

Books of account not maintained and Penalty levied - Once Penalty was u/s 271A has been levied for non-maintenance of books of accounts.

Held - Penalty u/s. 271B can be levied.

Haresh Ghanshyamdas Makhija v. Income Tax Officer, Ward2(2) - [2024] 160 taxmann.com 326 (Mumbai - Trib.)

Books of account not maintained and Penalty levied - Assessee did not maintain books of account within due date specified under section 139(1). Question of getting them audited to comply provision of section 44AB would not arise and thus, he could not be visited to penalty under section 271B for offence committed by him for not getting accounts audited.

Pradipbhai Dayabhai Aghara v. Income-tax Officer - [2024]159 taxmann.com 1591 (Rajkot - Trib.)

**SECTION 271FA
PENALTY FOR FAILURE TO FURNISH STATEMENT OF FINANCIAL TRANSACTION OR
REPORTABLE ACCOUNT**

Bonafide belief - Assessee had a bonafide belief that no return was required to be filed as there were no reportable transactions.

Held - No penalty was exigible under section 271FA upon assessee for not filing its return.

The Motor & General Finance Ltd. v. ACIT - [2024] 159 taxmann.com 1494 (Delhi - Trib.)

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SECTION 276C
WILFUL ATTEMPT TO EVADE TAX, ETC.

Scope of provision: Where Assessee-company filed return and paid self-assessment tax belatedly along with interest.

Held - Delayed payment of income-tax would not amount to evasion of tax, therefore, complaint filed against assessee-company and its directors under section 276C read with section 278B deserved to be quashed.

Hansa Metallica Ltd. v. Deputy Commissioner of Income-tax - [2024] 160 taxmann.com 235 (Punjab & Haryana)

SECTION 276CC
FAILURE TO FURNISH RETURNS OF INCOME

Proviso - Only criterion for initiation of prosecution is that there must be a wilful failure to furnish returns as required under section 139(1) and once that requisite is fulfilled, statutory presumption under section 278E starts operating and this provision brings in a statutory presumption with regard to existence of a culpable mental state.

Vinayagam Sabarisanthanakrishnan v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 406 (Madras)

Launching of prosecution – Appellate proceedings were pending.

Held - Pendency of appellate proceedings relating to assessment is not a bar for initiating Prosecution proceedings under section 276CC.

Vinayagam Sabarisanthanakrishnan v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 406 (Madras)

SECTION 277
FALSE STATEMENT IN VERIFICATION, ETC.

Under reporting of income - High Court had held that where prosecution proceedings under section 277 were launched against assessee two years prior to date of filing application before Settlement Commission under section 245C and moreover factum of pending prosecution was not brought to notice of Settlement Commission, provision under section 245-I was not applicable and, thus, proceedings under section 277 could not be quashed.

Held - SLP against order of High Court was dismissed.

S.S. Hyderabad Biryana (P.) Ltd. v. Deputy Director of Income-tax (Investigation) - [2024] 160 taxmann.com 418 (SC)

SECTION 282
SERVICE OF NOTICE GENERALLY

Notice not sent on Primary email id - Assessing Officer issued a notice under section 148A(b) and passed an order under section 148(d) to assessee-company on secondary email address and not registered e-mail address.

Held - Impugned notice and consequential order were liable to be quashed and set-aside.
Grs Hotel (P.) Ltd. v. Union of India - [2024] 160 taxmann.com 125 (Allahabad)

Show cause notice – Not served on assessee - Show cause notice for initiating proceedings under section 12A(1)(ac)(iii) was only reflected on e-portal of department and was not served upon assessee, he would be entitled to file his reply and department would be entitled to examine same and pass a fresh order.

Munjal BCU Centre of Innovation and Entrepreneurship v. Commissioner of Income-tax (Exemptions) - [2024] 160 taxmann.com 629 (Punjab & Haryana)

SECTION 282A
AUTHENTICATION OF NOTICES AND OTHER DOCUMENTS

DIN not mentioned - On account of technical issues departmental authorities were prevented from making digital signatures, prompting manual signing of assessment order, however, said orders were uploaded and sent to assessee's registered email ID.

Held - It was deemed to be authenticated and therefore, assessment order was valid.

Mytheenkunju Muhammed Kunju Kandathil Jewellers v. Deputy Commissioner of Income-tax, IT - [2024] 160 taxmann.com 630 (Cochin - Trib.)

THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988

SECTION 2(9) – Illustrations - Assessee-company purchased 37 properties by certain funds which were generated through increase in share capital by issuance of shares at premium by alleged shell companies, transactions in question were arrangements in respect of properties where person providing consideration was fictitious.

Held - Transactions fell under section 2(9)(D).

Krishna Sudama Marketing (P.) Ltd. v. Union of India - [2024] 160 taxmann.com 724 (Calcutta)

SECTION 24 – Benami Property - Provisional Attachment Order - Petitioners challenged show cause notice and provisional attachment order on ground that alleged benami transaction had taken place prior to 1-11-2016, date when Prohibition of Benami Property Transactions Act, 1988 stood amended. Show cause notice was a detailed notice containing several factual basis.

Held - It was within province of adjudicating authority to decide whether property was benami in nature and whether petitioners were liable for any action under Act of 1988.

Santosh Bhadoriya v. Union of India - [2024] 160 taxmann.com 511 (Madhya Pradesh)

THE PREVENTION OF CORRUPTION ACT, 1988

SECTION 13 – Criminal conduct by a public servant - Favourable outcome in accused's IT appeal in ITAT cannot be considered as conclusive proof to discharge him in corruption case PC Act, 1988.

Puneet Sabharwal v. CBI - [2024] 160 taxmann.com 547 (SC)