

HIGH COURT RULING

[2010-TIOL-190-HC-P&H-IT](#)

Mrs Amrita Chadha Vs CIT, Ludhiana (Dated : March 2, 2010)

Income tax - Sec 260A - condonation of delay - Sec 5 of Limitation Act - Can HC condone delay under Sec 5 of Limitation Act? - held, wherever the legislature desires to provide for condonation of delay, a specific provision has been made in the Act and, therefore, if no such provision has been made, then no application under Section 5 of the Limitation Act could be filed as the Act itself is a complete code like Excise Act, which has been considered by the Supreme Court in Hongo India Private Limited (supra). The reasoning adopted by the Supreme Court in the case of Hongo India Private Limited [2009-TIOL-48-SC-CX-LB](#) is fully applicable to the question raised in the present appeals. Therefore, the applications seeking condonation of delay filed under Section 5 of the Limitation Act cannot be accepted.

[2010-TIOL-188-HC-KAR-IT](#)

CIT, Bangalore Vs Sri Babu Reddy (Dated : March 1, 2010)

Income tax - Sec 44AA, 271A - Assessee is a civil contractor - files return along with tax audit report - AO notices that the assessee has not maintained books of account as prescribed by Sec 44AA - assessee contends that there is no prescribed format - Tribunal goes with the assessee - held, since no format has been prescribed by Sec 44AA for the assessee there is no question of penalty u/s 271A - Revenue's appeal dismissed

[2010-TIOL-187-HC-DEL-IT](#)

Van Oord Acz India (P) Ltd Vs CIT (Dated : March 15, 2010)

Income tax - Sec 195, 40(a)(i) - TDS - Indo-Netherlands DTAA - Article 24 - mobilization and demobilization costs reimbursed to foreign company- Whether Assessee is liable to deduct tax at source under Section 195(1)

[Also see analysis of the Order](#)

[2010-TIOL-184-HC-P&H-IT](#)

CIT, Ludhiana Vs Sh Naveen Chander (Dated : February 8, 2010)

Income tax - Sec 158BD - search & seizure - notice issued by registered post - same is received back - served by affixture - Revenue claims the service of notice by affixture not objected by the assessee - Tribunal sets aside - held, since the service of notice by affixture not done in accordance with the procedure laid down by Order V Rule 20 of the Code, no infirmity in Tribunal's order - Revenue's appeal dismissed

[2010-TIOL-179-HC-ALL-IT](#)

CIT , Lucknow Vs M/s Manav Vikas Avam Sewa Sansthan (Dated : February 24, 2010)

Income tax - Sec 12(A), 80G - Assessee is a registered society - also gets registration u/s 12(A) - it had originally 10 objects - subsequently adds 14 more objects and gets the same registered - seeks Sec 80G benefits - Commissioner takes the view that after modification of objects assessee is required to seek fresh registration u/s 12(A) - declares earlier registration invalide and withdraw the same - Tribunal disagrees with Revenue - held, in the present case, the sub-section (3) of section 12AA of the Act has come into force w.e.f. 01.01.2004 by the Finance (2) Act, 2004. As such while passing the order, the Commissioner of Income Tax had no power whatsoever to review or recall the earlier order dated by which the assessee was granted the registration under section 12A of the Income Tax Act - Revenue's appeal rejected

[2010-TIOL-178-HC-KAR-IT](#)

CIT, Bangalore Vs M N Swaminathan (Dated : February 16, 2010)

Income tax - Sec 37 - Assessee runs theatres - pays money to police and gunda elements to keep away from the business premises - AO disallows the claim - CIT(A) goes with the AO - Tribunal partly allows the disallowance - held, since the payments have been made to the police and rowdies to keep away from the premises, it is illegal money and bribe which cannot be allowed as deduction - Revenue's appeal allowed

[2010-TIOL-177-HC-MUM-IT](#)

CIT, Pune Vs Mallinath Sharnayya Swami (Dated : February 25, 2010)

Income tax - Sec 158BC(c), 158BFA- Search & seizure - assessee files block return declaring undisclosed income but fails to pay tax - Revenue passes an order u/s 158BC(c) - Tribunal sets aside the penalty - held, Tribunal has not applied its mind - Revenue has a point that the assessee has not paid tax on the basis of the return u/s 158BC(c) and one of the conditions enumerated in the proviso is not satisfied - case remanded

[2010-TIOL-175-HC-DEL-IT](#)

CIT Vs Dr Percy Batlivala (Dated : December 16, 2009)

Income tax - hypo tax - Assessee are non-residents - enter into agreement with their foreign employers before coming to India on deputation - As per the agreement the assessee are promised extra payment for tax liability if any arises in India in excess of the tax liability being paid by them in their resident countries - Assessee discharge their tax liabilities in India as per the income earned - since the tax rate is lesser than than foreign countries in India, the employers save the difference between the tax liabilities in their resident countries and India which is known as 'hypothetical tax' - AO raises demand - Tribunal deletes the additions - held, no infirmity in the Tribunal's order - no question of law - Revenue's appeals dismissed

[Also see analysis of the Order](#)

[2010-TIOL-173-HC-MUM-IT](#)

Rallis India Ltd Vs ACIT, Mumbai (Dated : March 4, 2010)

Income tax - Sec 147, 148, 36(1)(vii), 36(2) - Assessee claims deduction for bad debts - also computes book loss u/s 115JB - return revised to increase the quantum of loss - Scrutiny - AO partly disallows the bad debts but also allows the claim to some extent - CIT(A) allows the appeal - cross appeals pending before the Tribunal - Revenue meanwhile issues notice u/s 148 for reopening the assessment - takes the ground that the assessee had claimed bad debts and advances and also the assessee had not debited any sum on account of write off of bad debts to P & L A/c - held, on the date on which the Assessing Officer purported to exercise his power to reopen the assessment under Section 147, the legislative amendment by the insertion of clause (i) to Explanation (1) to Section 115JB had not been brought into force on the statute book - therefore, the subsequent amendment could not have been and is not a ground which has been taken by the Assessing Officer, while reopening the assessment. The validity of the notice issued by the Assessing Officer in seeking to reopen the assessment must be determined with reference to the reasons which are found in support of the reopening of the assessment. These reasons cannot be allowed to be supplemented on a basis which was not present to the mind of the Officer and could not have been so present on the date on which the power to reopen the assessment was exercised - Assessee's appeal allowed

[2010-TIOL-172-HC-MUM-IT](#)

Godrej Agrovet Ltd Vs DCIT, Mumbai (Dated : February 11, 2010)

Income tax - Sec 80M, 147, 115O - Assessee is a registered company - receives dividend income from another domestic company on intercorporate deposits - claims deduction u/s 80M - AO disallows certain part of dividends received on the ground of administrative expenditure incurred on earning it - CIT(A) restricts the disallowance to 2% of dividend income - issue goes to Tribunal - meanwhile, AO gives effect to CIT(A)

order - Tribunal allows deduction - Revenue initiates Sec 147 proceedings on the ground that the assessee had paid dividends after due date and the dividend received by it is taxable as per provisions of Sec 115O - held, invoking Sec 147 on the extraneous ground like applying Sec 115O is not sustainable - Assessee's appeal allowed

[2010-TIOL-171-HC-DEL-IT](#)

CIT Vs Gora Mal Hari Ram Ltd (Dated : February 15, 2010)

Income tax - Sec 43(5), 73 - Assessee incurs loss on bargain settlement - AO and CIT(A) treat it as 'speculative transaction' falling within the meaning of Sec 43(5) and disallow the set off of the claim - Tribunal takes the view that it was a loss arising out of regular course of business with regard to breach of contract - allows set off for loss against regular business income - held, no infirmity in Tribunal's order - however, even if it is presumed that it is speculative transaction, Section 43(5) merely defines as to what a speculative transaction is for the purposes of Section 28 to Section 41 - It is only when the speculative transaction, as defined in Section 43(5), matures into a speculative business as appearing in Explanation 2 to Section 28 that any effects would flow from the said definition. In case the speculative transaction matures into a speculative business, then the loss in such a transaction can only be set off against the gains or profits of a speculative business in terms of Section 73 of the said Act - Revenue's appeal dismissed

[2010-TIOL-170-HC-MAD-IT](#)

M/s Tiruvengadam Investments P Ltd Vs CIT, Chennai (Dated : February 9, 2010)

Income tax - Sec 67 of VDIS Scheme - assessee files declaration under the scheme but fails to pay tax with interest within three months period - Revenue rejects the declaration - held, it is settled principle of law that between equity and law, the court has to follow the latter - since the assessee fails to pay tax within the due period, it cannot seek extension of the same and the court cannot extend it by exercising its writ jurisdiction under Article 226 - assessee's petition dismissed

[2010-TIOL-168-HC-P&H-IT](#)

Risal Singh & Another Vs UoI (Dated : January 11, 2010)

Income tax - Writ - TDS - Appellant's agricultural land is acquired by the Govt - compensation - Collector deducts tax at source and deposits the same with the Revenue - held, since TDS is liable only on compensation paid for non-agricultural land, it was wrong to deduct tax at source - refund to the Collector ordered - Collector directed to decide whether the compensation was for agricultural land or otherwise - if it is for agricultural land, refund to be granted within three months - Appellant's appeal allowed

[2010-TIOL-167-HC-DEL-IT](#)

CIT Vs Insilco Ltd (Dated : January 22, 2010)

Income Tax - section 234B - Assessee manufactures and exports silco - AO refuses to allow the set off on the ground that the interest income earned by the Assessee during the period of construction is chargeable to tax under the head "Income from other sources". The interest paid, on the other hand, is not directly relatable to interest received by the Assessee and therefore, the interest income could not be set off against the interest paid. The AO also levies interest u/s 234B and 234C - CIT(A) dismisses Appeals - For A.Y 1990-91 the Tribunal decides the appeal against the Assessee. For the A.Y 1991-92 the Tribunal orders that the AO would allow to set off of income earned against interest paid and the net amount would be taken for the purpose of taxation. The Tribunal also held that interest u/s 234B cannot be charged in the case of the Assessee as the Assessee held a bona fide belief that there is no income chargeable to tax because interest paid exceeded the receipt of interest - held, interest is payable in case advance tax is not paid by stipulated dates and there is a "default". It would be immaterial whether such a default is intentional or bona fide because of the reason that the provision is compensatory in nature inasmuch as the Revenue is deprived of such payment which should have been made on an earlier date and therefore, becomes entitled to charge the interest, backed by the aforesaid statutory provision for the period of delay in receiving the payment of tax. The plea of bona fide default, would be totally lien. Revenue Appeal allowed.

[2010-TIOL-165-HC-MUM-IT](#)

Anil Radhakrishna Wani Vs ITO, Mumbai (Dated : March 4, 2010)

Income tax - Writ - Sec 147, 148 - Assessee is an advocate - retires from a partnership firm - on retirement, assessee is entitled to receive certain payments in eight instalments - receives first instalment and discloses the same in his return - scrutiny - notice u/s 148 after four years - AO takes the view that under clause 35 of the Deed of Partnership, a partner who has retired voluntarily shall not, as long as the continuing or surviving partners shall carry on the business, solicit the clients of the firm for a period of three years from the date of his retirement - the amount payable to the petitioner was on account of a renunciation of his right to freely practice his profession for a period of three years and that the amount was consequently liable to "capital gains tax under Section 28(va)" - assessee opts for writ petition - held, since the assessee has made full disclosure of all the material facts, the conditions precedent for invokign powers u/s 147 do not exist - Assessee's appeal allowed

[2010-TIOL-164-HC-MUM-IT](#)

CIT, Mumbai Vs M/s Earnest Exports Ltd (Dated : February 25, 2010)

Income tax - Sec 254(2), 263, 80HHC - Assessee is an exporter - claims benefits of exports incentives - CIT invokes powers u/s 263 on the ground that the profits arising out of sale of DEP licence is not covered u/s 28(iii) - Tribunal agrees with the CIT after considering the decisions of the other benches of the Tribunal - assessee files ROM application - Tribunal allows the appeal by holding that in view of the decisions of the Tribunal's other benches the benefits are admissible - held, Tribunal u/s 254(2) does not have the power to re-appreciate the correctness of its own decision - it is confined to rectification of a mistake apparent on record - Section 254(2) is not a carte blanche for the Tribunal to change its own view by substituting a view which it believes should have been taken in the first instance. Section 254(2) is not a mandate to unsettle decisions taken after due reflection. The provision empowers the Tribunal to correct mistakes, errors and omissions apparent on the face. The Section is not an avenue to revive a proceeding by recourse to a disingenuous argument nor does it contemplate a fresh look at a decision recorded on merits, however appealing an alternate view may seem. Unless a sense of restraint is observed, judicial discipline would be the casualty. That is not what Parliament envisaged - Revenue's appeal allowed

[2010-TIOL-163-HC-DEL-IT](#)

CIT Vs Forech India Ltd (Dated : February 24, 2010)

Income tax - Survey u/s 133A - Revenue finds excess stock and bills not entered into purchase account in the financial books - makes additions - CIT(A) and Tribunal disagree with the AO on the ground that the assessee had purchased the goods on high sea basis and although the goods had been received at the factory premises but since the bills were not handed over to the accountant, the same were not entered into the financial books - held, these are findings of facts and do not call for interference - Revenue's appeal dismissed

[2010-TIOL-162-HC-MAD-IT](#)

CIT, Tiruchirappalli Vs M/s Kamalambika Co Operative Urban Bank Ltd (Dated : February 16, 2010)

Income tax - Sec 80P(2)(a)(i) - Assessee is a cooperative bank - files its return of income from banking activities - AO disallows a part of income attributable to sale and purchase of securities which does not partake the character of banking activities - Tribunal allows the deduction - held, the Revenue's argument that as per RBI guidelines only 10% of fund is to be invested in securities and anything above it would be taxable income, does not hold good as it is being raised for the first time before the HC and is also not consistent with the apex court decision in Nawanshahar Central Co-operative Bank Ltd. ([2005-TIOL-94-SC-IT](#)) - Revenue's appeal dismissed

[2010-TIOL-159-HC-P&H-IT](#)

Paramjit Singh Vs ITO, Phagwara (Dated : February 10, 2010)

Income tax - unexplained investments - Assessee gets ancestral land registered in his name through sale deed - submits affidavits from his uncles stating that since the assessee's father helped them long back and the fact that they are now settled in the UK, they have not received any consideration for the said share in the lands - AO disagrees but CIT(A) prefers to go by the contents of the affidavits filed by his uncles and deletes the additions - Tribunal disagrees with the CIT(A) - held, the fact that the assessee and his uncles have not opted for the gift deed and decided to take the registry of sale deed, the sum mentioned for the purpose of stamp duty is to be treated as undisclosed investment - Assessee's appeal dismissed

[2010-TIOL-158-HC-DEL-IT](#)

P P C Business & Products Pvt Ltd Vs CCIT (Dated : February 11, 2010)

Income tax - Writ- Sec 234A, 234B & 234C - Assessee seeks waiver of interest on the ground that the CBI had raided its premises and also seized its books of account which prevented it from paying advance tax and filing return - held, in view of the fact that the assessee managed to file tax audit report it could not have been possible without providing the necessary documents to independent auditor - then the CBI raid was conducted much later and also the assessee fails to provide the panchnama copy to the Revenue - Assessee's writ dismissed

[2010-TIOL-157-HC-DEL-IT](#)

CIT, New Delhi Vs P C Jain (Dated : February 16, 2010)

Income tax - Sec 132(1) - issue of warrant of authorisation - Tribunal rules against the Revenue on the ground that the Addl Director is not authorised to issue the warrant of authorisation - Held, in view of the amendment in Sec 132(1) vide Finance (No 2) Act, 2009 with retrospective effect from June 1st, 1994, the matter is remanded to the Tribunal for reconsideration

[2010-TIOL-156-HC-AHM-IT](#)

M/s M Kantilal Exports Vs ACIT (Dated : February 23, 2010)

Income tax - Sec 69C - Assessee is a partnership firm - engaged in import of rough diamonds and export of polished diamonds - AO finds excess diamonds in stock register and makes additions u/s 69C - CIT(A) finds that there was a typographical error in typing the actual quantity of stocks and an affidavit was filed by the auditor to make correction in this regard - deletes the additions but Tribunal reverses the CIT(A) order - held, the Tribunal's order is not sustainable as there are two affidavits from the typist and the auditor that there were typo errors - there is no other evidence to establish that the assessee had incurred expenditure outside the book to procure extra stocks - Assessee's appeal allowed

[2010-TIOL-155-HC-DEL-IT](#)

CIT Vs Ilpea Paramount (P) Ltd (Dated : February 18, 2010)

Income tax - Sec 115JA - AO makes additions for provision for doubtful debts, provision for doubtful advances and provision for gratuity - Tribunal deletes the additions - held, in view of retrospective amendment in Sec 115JA vide Finance (No 2) Act, 2009 where clause (g) has been inserted in the Explanation contained in Sec 115JA(2), the sum set aside for provision for diminution in the value of any asset is not allowable - in view of the apex court decision in HCL Comnet Systems & Services ([2008-TIOL-182-SC-IT](#)) the provisions for doubtful debt and advances are nothing but provision for diminution in the value of asset covered under Clause (g) of the said Explanation - Revenue's appeal allowed

[2010-TIOL-154-HC-DEL-IT](#)

CIT Vs M/s Delhi Press Samachar Patra (P) Ltd (Dated : February 17, 2010)

Income tax - Sec 31(i) - Assessee has a press building which is used for business purpose - deals in printing and publicatin of magazines - the building was constructed in 1975 - repairs were carried out from time to time and the same was claimed as deduction during various AYs - assessee carries out major repair work and treats the same as current repairs - AO and CIT(A) treat the same as capital expenditure - Tribunal allows the assessee's appeal - held, there is no evidence which supports the Revenue's plea that a part of the building was demolished and a new structure was erected - since it is a case of current repairs, deduction is allowable - Revenue's appeal dismissed

[2010-TIOL-153-HC-AHM-IT](#)

CIT Vs Advaitya Products Pvt Ltd (Dated : February 15, 2010)

Income tax - Sec 40A(2)(b) - Assessee is accused by the AO that it has been diverting profits through its flagship company to avoid paying tax - Assessee buys chemicals from the market and sells the same to its sister concern at a marginal profit - flagshi company in turn sells the same at a higher profit and claims adjustments against unabsorbed losses and depreciation - CIT(A) takes the view that the AO cannot dictate a businessman how to do business - there is nothing incriminating against the assessee - Tribunal agrees with the CIT(A) - held, in view of the Tribunal's detailed findings that the assessee is a marginal player in the market and its flagship company manufactures only a few of total product porfolio it sells, there is nothing to suggest that the assessee is diverting profits to avoid paying tax - Revenue's appeal dismissed

[2010-TIOL-152-HC-DEL-IT](#)

CIT Vs ACC Rio Tinto Exploration Ltd (Dated : January 28, 2010)

Income tax - Sec 35E - Assessee is engaged in exploration and prospecting of ores and minerals - changes its accounting practice to align the same with the global policy for the Group companies - declares losses - AO disagrees with the assessee and alleges that the change in the accounting policy is a colourable device, aimed at availing the benefits of Sec 35E which allows set-off of losses carried forward to the year of commercial production - CIT(A) and Tribunal disagree with the AO - held, going by FIPB permission and the objects of the assessee company, it cannot undertake commercial production of minerals and thus Sec 35E does not get attracted in this case - Revenue's appeal dismissed

[2010-TIOL-151-HC-MUM-IT](#)

CIT, Mumbai Vs M/s ABG Heavy Industries Limited (Dated : February 15, 2010)

Income tax - Sec 80IA, 80IA(4) - Assessee is awarded a contract for leasing of container handling cranes at JNPT - as per contract, assessee deploys rail mounted quay side cranes at the terminal which handles loading, unloading and storage of containers - claims Sec 80IA benefits allowed to companies engaged in development of infrastructure - AO disallows by holding that the assessee is merely engaged in the business of supplying, installing, testing, commissioning and maintaining cranes at the Port and is not in the business of developing, maintaining and operating a Port - CIT(A) and Tribunal disagree with the AO - held, the subsequent amendment of Section 80IA (4A) of the Act clarifies that the provision would apply to an enterprise engaged in (i) developing; or (ii) operating and maintaining; or (iii) developing, operating and maintaining an infrastructure facility and it is reflective of a position which was always construed to hold the field. Before the amendment that was brought about by Parliament by Finance Act of 2001, the consistent line of circulars of the Board postulated the same position. The amendment made by Parliament to Section 80IA (4) of the Act set the matter beyond any controversy by stipulating that the three conditions for development, operation and maintenance were not intended to be cumulative in nature. Revenue's appeal dismissed.

[2010-TIOL-150-HC-DEL-IT](#)

CIT Vs Oriental Structural Engineers P Ltd (Dated : February 11, 2010)

Income tax - Sec 40A(2) - Assessee is a joint venture of two partners - enters into agreement with its partners that whatever work is obtained by it from the National Highway Authority of India, the same will be executed by the partners - Assessee pays out about 98.5% of the receipt to the partners - incurs certain expenditure on account of service tax, audit fee etc and claims the same as loss - Revenue disallows part of expenditure u/s 40A(2) on the ground of being excessive - CIT(A) and Tribunal disagree with the AO - held, since the Tribunal has given clear finding that there is nothing to suggest excessive expenditure, there is no substantial question of law involved - Revenue's appeal dismissed

[2010-TIOL-149-HC-DEL-IT](#)

CIT Vs Sona Koyo Steering Systems Limited (Dated : February 10, 2010)

Income tax - Sec 80I, 80I(6) - assessee is an auto part manufacturer - has two units - one unit makes profits but other accumulates losses - claims Sec 80I benefits for the profit-making unit - AO for setting off the losses against the profit of the other unit - Tribunal takes the view that the two units are independent and only the profit-making unit is eligible for Sec 80I benefits - held, it is settled law that while computing the quantum of deduction under Section 80-I(6), the AO has to treat the profits derived from an industrial undertaking as the only source of income of the assessee in order to arrive at a deduction under Chapter VI-A. Under Section 80-I(6), for the purposes of calculating the deduction, the loss sustained in one of the units is not to be taken into account because sub-section (6) contemplates that only the profits shall be taken into account as if it was the only source of income. Revenue's appeal dismissed

[2010-TIOL-147-HC-AHM-IT](#)

CIT Vs Core Healthcare Limited (Dated : February 15, 2010)

Income tax - Sec 37(1) - Assessee is a pharma company - undertakes free distribution of I.V. sets relating to its new project and claims deduction for such an expenditure - AO disallows it on the ground that such a distribution was done even before the commencement of the project and the expenditure was not incurred fully and wholly for business - CIT(A) and Tribunal allow the appeal - held, since the new project is related to the existing products line and the business it has been dealing in - it is revenue expenditure, allowable (u/s 3791) - Revenue's appeal dismissed

[2010-TIOL-146-HC-MUM-IT](#)

Prashant S Joshi Vs ITO, Mumbai (Dated : February 22, 2010)

Income tax - Writ - Sec 148 - assessee is a partner in a partnership firm, engaged in real estate business - assessee retires and partnership deed is dissolved - on dissolution of the deed, assessee gets huge sum besides the credit lying in the capital account - invocation of Sec 147 - Writ filed - held, although the AO is free to take note of excessive deduction or relief or claims of losses but such an act cannot be arbitrary whim and must be based on a reasonable belief. The sufficiency of the evidence or material is not open to scrutiny by the Court but the existence of the belief is the sine qua non for a valid exercise of power. In the instance case, the reasons recorded would not have led a prudent person to form a belief that income had escaped assessment within the meaning of Sec 147 - Assessee's appeal allowed

[Also see analysis of the Order](#)

[2010-TIOL-144-HC-P&H-IT](#)

CIT, Karnal Vs M/s Accent For Living (Dated : February 11, 2010)

Income tax - Sec 80IA, 80IB - Assessee claims deductions for drawback amount and profit on sale of licences - AO disallows but Tribunal allows the assessee's appeal - held, issue is no longer disputed as the Apex Court has settled it in the case of M/s Liberty India by holding that such receipts are not profits derived from the business activities of industrial undertakings - no eligible for Sec 80IA benefits - Revenue's appeal allowed

[2010-TIOL-143-HC-P&H-IT](#)

CIT, Ludhiana Vs M/s Eastman Industries (Dated : February 8, 2010)

Income tax - Sec 80HHC, 56, 10(33), 14A - Assessee deals in sale and purchase of mutual funds and money lending business - files NIL return after adjusting business losses - also shows net loss from mutual fund business - also earns dividend income - claims deduction for bad debts - AO disallows bad debts written off and makes addition - CIT(A) deletes the addition made for bad debts but holds FDR interests fall under the head 'income from other sources' and the interest income from money lending is business income - Tribunal agrees with the CIT(A) in the absence of any rebuttal from Revenue - held, it is a finding of facts and no substantial question of law arises - Revenue's appeal dismissed

[2010-TIOL-142-HC-P&H-IT](#)

CIT, Panchkula Vs M/s Haryana Tourism Corporation Ltd (Dated : February 4, 2010)

Income tax - Sec 24 - Assessee is a public sector undertaking - runs tourist complexes, hotels and motels - declares rental income and claims deduction u/s 24 - had claimed similar deductions in the past and was allowed the same - AO disallows by treating the same as business income - Based on its earlier years' decision that such income is rental income from house property Tribunal rules in favour of the assessee - held, no infirmity in Tribunal's order allowing deduction u/s 24 as it has merely followed the rule of consistency - Revenue's appeal dismissed

[2010-TIOL-141-HC-MUM-IT](#)

CIT Vs M/s Information Architects (Dated : February 9, 2010)

Income tax - Sec 80HHE, 40(a)(iii) - Assessee enters into an agreement with a non-resident company for rendering software development services - sends its technically-trained manpower for on-site design and development of software to the non-resident's place of work - charges non-resident company on manhour basis - also pays certain amount to its employees as overseas maintenance allowance - claims deduction u/s 80HHE and also deduction for the sum paid to its employees - AO disallows but CIT(A) and Tribunal allow the assessee's appeal - held, since the assessee was engaged in design and development of software for the non-resident company, and also sent its trained manpower for onsite maintenance and development to the premises of the non-resident, and the employees filed their returns in India as the assessee's employees, it is nothing but export of computer software and the assessee is eligible for Sec 80HHE benefits

Sec 40(a)(iii): The sum paid to the employee as overseas maintenance allowance constitutes only reimbursement incurred by the employees per day and the same would not form part of the salary in the hands of the recipients - no application of Sec 40(a)(iii)

[2010-TIOL-140-HC-DEL-IT](#)

DIT Vs Sahara India Financial Corporation Ltd (Dated : February 19, 2010)

Income tax - Indo-Canada DTAA - Article 13 - Assessee enters into a contract with a Canadian entity for Title Sponsorship Rights of a cricket tournament between India and Pakistan - whether payments made for acquiring sponsorship benefits amount to royalty as per Article 13(3)(c) of the tax treaty

[Also see analysis of the Order](#)

[2010-TIOL-139-HC-DEL-IT](#)

CIT Vs Idea Cellular Ltd (Dated : February 19, 2010)

Income tax - TDS - Sec 194H - Assessee is a cellular telephone service provider - provides two types of connections to subscribers - prepaid and post-paid through distributors called 'Prepaid Market Associates' (PMAs) - offers discount for prepaid calling services to its distributors - Survey u/s 133 - Revenue finds no TDS being deducted at source on the 'commission' being paid to PMAs in the form of Discount - Assessee insists it has 'principal to principal' relationship with distributors who buy SIM Cards at certain price from the assessee and has the freedom to sell them at their own price - AO finds from the conditions of the agreement that the distributors were required to display the SIM Cards and Recharge Coupons in such a manner that they appeared to be owned by the assessee and the PMAs were not allowed to sell competitors' products, to file monthly sales return and the assessee had the right to terminate the agreement - AO concludes that it is a case of 'principal and Agent' relationship and the commission was offered in the form of 'discount' on prepaid SIM Cards and the assessee was liable to TDS u/s 194H - CIT(A) agrees with the AO but the assessee succeeds before the Tribunal

[Also see analysis of the Order](#)

[2010-TIOL-137-HC-MAD-IT](#)

M/s Revathi C P Equipment Ltd Vs DCIT, Coimbatore (Dated : January 18, 2010)

Income tax - Writ petition - Sec 147, 80I - Assessee is a manufacturer of water well drilling rigs - claims deduction u/s 80I - AO invokes powers u/s 147 and reopens assessments beyond four years limitation period - issues show cause notices to deny Sec 80I benefits - held, since Revenue has only issued SCNs which can be issued beyond four years if income has escaped assessment, and the assessee has not challenged the jurisdiction of the AO, it would be ideal for the assessee to file returns in response to the notices u/s 148 and let the AO decide the case on merits - Assessee's petition dismissed

[2010-TIOL-131-HC-KAR-IT](#)

CIT, Bangalore Vs M/s United Breweries Ltd (Dated : January 11, 2010)

An expenditure incurred for securing shares per se is a 'capital expenditure' and never Revenue expenditure'; Even on the accepted legal principles, a 'debt' is an expression well known in legal parlance and is an amount which is a legal obligation which if not discharged will give rise to a claim in favour of the creditor. An expenditure in the nature of 'capital expenditure' straight away goes out of the purview of section 37 of the Act unless the amount fully qualifies in terms of the other statutory provisions and in the instant case, in terms of section 36[1][vii] of the Act, there is no question of 'written off irrecoverable debts' which claim inevitably fails and the matter does not warrant interference even for a remand

[Also see analysis of the Order](#)

[2010-TIOL-130-HC-MUM-IT](#)

Grasim Industries Ltd Vs CIT (Dated : February 1, 2010)

Income Tax – Reassessment - when the Assessing Officer took a possible view, the Commissioner exceeded his jurisdiction in seeking recourse to his power under Section 263 - order sought to be revised must be erroneous in so far as it is prejudicial to the interests of the Revenue. it is now a settled principle that where the Assessing Officer has adopted one of the courses permissible in law or where two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Assessing Officer is unsustainable in law. In the present case, two views were inherently possible and the assessee therefore, cannot be subjected to the exercise of the jurisdiction under Section 263.

[Also see analysis of the Order](#)

[2010-TIOL-129-HC-MUM-IT](#)

CIT Vs Gopal Purohit (Dated : January 6, 2010)

Income Tax - Sec 10(38) - Capital Gains - On the issue of Tribunal finding that Assessee engaged in two different types of transactions. The first set of transactions involved investment in shares. The second set of transactions involved dealing in shares for the purposes of business - Held, a finding of fact has been arrived at by the Tribunal as regards the existence of two distinct types of transactions namely, those by way of investment on one hand and those for the purposes of business on the other hand. No substantial question of law.

On the issue of the Tribunal observing that there ought to be uniformity in treatment and consistency when the facts and circumstances are identical, particularly in the case of the Assessee.- Held, such approach of the Tribunal cannot be faulted. The revenue did not furnish any justification for adopting a divergent approach for the Assessment Year in question.

On the issue of entries in the books of account - Held, there cannot be any dispute about the basic proposition that entries in the books of account alone are not conclusive in determining the nature of income. The Tribunal has applied the correct principle. Revenue Appeal dismissed.

[2010-TIOL-128-HC-KAR-IT](#)

M B Ramesh Vs ITO, Mysore (Dated : January 4, 2010)

Income tax - Sec 54 - Assessee sells residential property and invests in like-property and claims exemption of capital gains u/s 54 - AO disallows on the ground that it was only a mud structure which has been demolished - CIT(A) allows the benefits but Tribunal reverses the same - held, no substantial question of law involved - Assessee's appeal dismissed

[2010-TIOL-127-HC-MAD-IT](#)

CIT, Trichy Vs M/s Premier Poly Sacks P Limited (Dated : January 6, 2010)

Income tax - Sec 40A(2)(a), 143 - Assessee is a HDPE pipes manufacturer - claims deduction for unabsorbed losses and investment allowances and files NIL return - AO disallows sales commission paid to its Directors - Tribunal allows the appeal - held, since the Directors had given personal guarantee for securing orders for the company and a Board Resolution was passed to this effect, it is revenue expenditure - Revenue's appeal dismissed

[2010-TIOL-126-HC-KOL-IT](#)

Smt Rekha Saha Vs CIT (Dated : December 18, 2009)

Income tax - Writ - Sec 194C, 264, 147 - Assessee is in the business of mechanical fabrication - sub-lets its contract and deducts TDS u/s 194C on payments made to sub-contractors - assessee's advocate files annual TDS return - AO initiates proceedings u/s 147 - assessee finds her advocate had made error in filing TDS return - files revised return - application u/s 264 - verification ordered - verification report indicates revised annual TDS return was bogus - held, since a copy of the verification report was not provided to the assessee and the fact that there is no evidence to controvert that the revised annual return was bogus, the assessee's petition is allowed

[2010-TIOL-125-HC-DEL-IT](#)

CIT Vs Aimil Ltd (Dated : December 23, 2009)

Income tax - Sec 36(1)(va), 43B - Assessee deposits employer's contribution as well as employees' contribution to PF and ESI after due date - AO disallows and CIT(A) agrees with him - Assessee files application u/s 154 for rectification of mistake and CIT(A) deletes the addition as assessee had made payments before the due date - Tribunal dismisses Revenue's appeal - held, if the employer deposits its contribution late it pays interest and penalty under the PF Act - as long as it is deposited before filing the return it is allowable - Assessee's appeal allowed

[2010-TIOL-124-HC-DEL-IT](#)

CIT, Delhi Vs Nestor Pharmaceuticals Limited (Dated : December 23, 2009)

Income Tax – benefit under Section 80IA/80IB – initial year is the year in which commercial production starts, not trial production; The initial assessment year, for the purpose of Section 80IA, is the assessment year relevant to previous year in which the "industrial undertaking begins to manufacture or produce articles or things. that merely because some closing stock was shown as on 31st March, 1998, would not lead to the conclusion that there was commercial production as well. Naturally, even for the purpose of trial production material would be needed and there would be production which will result in stock of finished goods. Otherwise, there is overwhelming evidence produced by the assessee, and accepted by the Tribunal as well, from which it is clear that there was only a trial production

Even if there was sale of only one water cooler and one air-conditioner, it amounts to commercial production: In the present case, the assessee had sold one water cooler and one air-conditioner before April, 1998. Thus, the stage of trial production had been crossed over and the assessee had come out with the final saleable product which was in fact sold as well. The quantum of commercial sale would be immaterial. With sale of those articles marketable quality was established, more particularly when assessee failed to show that the dealer returned those goods

on the ground that there was any defect in the water cooler or air-conditioner produced and sold by the assessee to the dealer. Whether the purpose of that sale was to obtain registration of excise or sales tax would be immaterial.

[Also see analysis of the Order](#)

[2010-TIOL-122-HC-MAD-IT](#)

M/s Precot Mills Ltd Vs CBDT (Dated : January 18, 2010)

Income tax - Writ - Sec 234C, 119(2)(a) - Interest on delayed payment of advance tax - assessee files an application to the CBDT for waiver of interest - Board rejects it without attributing any reason - assessee goes in writ - held, while disposing an application under Section 119(2)(a) the Board acts as a quasi-judicial authority, and it should certainly give reasons even though the Act does not explicitly refer to the provision of such reasoning in the order - Once an application is entertained, it should be disposed of by giving reasons - Assessee's appeal allowed

[2010-TIOL-121-HC-AHM-IT](#)

CIT-III Vs Jaganath Rampal Kabra (Dated : February 8, 2010)

Income tax - Sec 36(1)(iii), 158BC - Block assessment - AO makes additions by disallowing interest expenditure, claim of loss and undisclosed investments in shares - CIT(A) and Tribunal delete the same - held, the CIT(A) and the Tribunal have found that apart from one unsigned letter allegedly indicating back to back transaction there is no evidence to prove that the assessee is involved in benami transactions - AO has made no inquiry even on remand order of the CIT(A) nor any information was gathered from the bank - additions are clearly based on assumptions and presumptions - no infirmity in Tribunal's order - Revenue's appeal dismissed

[2010-TIOL-120-HC-KAR-IT](#)

CIT, Bangalore Vs Shri Hariram Hotels P Ltd (Dated : December 1, 2009)

Income tax - capital gains - Assessee company borrows funds from its Director to buy a piece of land for building a hotel - for certain reasons the hotel could not be constructed - assessee sells off the property - also pays interest to the Director on borrowed fund and adds the same to the cost of acquisition of the asset for computing long-term capital gains - AO disallows - Tribunal grants relief to the assessee - held, since interest had accrued on the loans, the same is to be added to the cost of acquisition of the asset - Revenue's appeal dismissed

[2010-TIOL-117-HC-MUM-IT](#)

M/s Mistry Lalji Narsi Development Corporation Vs ACIT, Mumbai (Dated : January 19, 2010)

Income tax - Sec 80IB(10), 147, 148 - Assessee is a partnership firm - engaged in the business of development and construction - claims Sec 80IB benefits for certain projects - AO makes inquiry and allows the benefit - Reassessment initiated on the basis of a Municipal Authorities commencement certificate - held, since the assessee had already disclosed the same commencement certificate issued by the municipal authorities during the course of assessment, and no benefit was claimed for earlier projects, there is no basis for re-assessment - Assessee's appeal allowed

[2010-TIOL-116-HC-DEL-IT](#)

CIT Vs Ultimate Fashion Maker Ltd (Dated : January 29, 2010)

Income tax - Penalty u/s 271(1)(c) - Assessee claims deduction for DEPB benefits u/s 80IB - AO disallows and initiates penalty proceedings - Tribunal holds penalty not sustainable as the issue was debatable when the return was filed and the assessee had filed all primary materials to the AO - held, no infirmity in Tribunal's order - Revenue's appeal dismissed

[2010-TIOL-115-HC-MAD-IT](#)

CIT, Chennai Vs M/s Franco Tossi Ingegneria (Dated : January 5, 2010)

Income tax - Sec 44BBB - Assessee is an Italian company - enters into contract with Indian company for civil construction work of a power project - declares income on completed contract basis - meanwhile, Sec 44BBB is introduced vide Finance Act, 1989 w.e.f 1-4-1990 - AO takes the view that the entire payments made to the assessee even before the introduction of the new Section is to be taxed as per the deeming provisions of Sec 44BBB - CIT(A) and Tribunal disagree with the AO - Appeal to High Court - held, since the payments were made prior to the current year and the entire work was done and handed over to the Indian company much before the introduction of the new Section, there is no payment in the current year which can be taxed as per the new provisions - no infirmity in Tribunal's order - Revenue's appeal dismissed

[2010-TIOL-114-HC-HP-IT](#)

CIT, Shimla Vs M/s Shiv Ram Veg Food Industries (Dated : December 9, 2009)

Income tax - Sec 80IB - Assessee converts limestone into limestone power - claims it to be a manufacturing activity and takes Sec 80IB benefits - Revenue disallows - held, issue is no longer res integra as it is already settled by the Apex Court that such an

activity does amount to manufacture and the assessee is entitled to benefits - Revenue's appeal dismissed

[2010-TIOL-111-HC-MAD-IT](#)

CIT, Madras Vs Shri Panchu Arunchalam (Dated: February 1, 2010)

Income tax - Sec 254(2), 271(1)(c) - Assessee is a proprietor - makes a film in Tamil - AO makes assessment and finds that the assessee failed to disclose royalty received for the film - issues notice read with Sec 271(1)(c) - CIT(A) and Tribunal dismiss assessee's petition - ROM filed - Tribunal dismisses it - Assessee files another misc application for rectification of mistake apparent - Tribunal this time allows it - Appeal to High Court - held, when once the power for rectification of the earlier order is exercised and an order is passed, such order merges with the earlier order of the Tribunal. On the ground that a mistake apparent from the record had occurred, another application for rectification of the original order passed in the appeal may not lie. Whatever power conferred on the authorities must be exercised and orders passed thereon should have a finality attached to it, as otherwise the parties aggrieved by such orders would be entitled to file any number of such applications seeking for rectification and the same would amount to reviewing of the earlier order, which power does not vest in the Tribunal under Section 254 of the Act. Once an application seeking for rectification is disposed of, be it the revenue or the assessee, if aggrieved, should have the recourse to the provisions of appeal before this Court and either of them cannot invoke the provisions of Section 254(2) by filing another application for rectification which cannot be entertained under that section - Revenue's appeal allowed

[2010-TIOL-110-HC-DEL-IT](#)

DTTDC Ltd Vs ACIT (Dated: January 25, 2010)

Income tax - Sec 147 - Assessee is a State Govt run undertaking - Govt authorises it to run liquor vends - assessee also required to set aside a sum of Rs 5/- per bottle for Transport Infrastructure Utilisation Fund (TIUF) which is to be utilised for construction of flyovers and pedestrain facilities - AO treats the same as taxable - Tribunal disagrees with the AO - Revenue continues to take similar stand for other AYs in view of pending petitions before the HC - reopens assessment - assessee questions the same - held, in view of the fact that the AO has applied its mind and the assessee furnishing detailed answers, reassessment would amount to change of opinion - AO is allowed to initiate re-assessment on satisfaction of certain conditions but has no power to 'review' its own decision - Assessee's appeal allowed

[2010-TIOL-109-HC-DEL-IT](#)

CIT Vs Aero Traders (P) Ltd (Dated: January 25, 2010)

Income tax - Sec 271(1)(c) - assessee is a manufacturer and exporter of shoe uppers primarily to the erstwhile USSR - due to disintegration of the USSR, assessee suffers huge losses - decides to file no return - notice u/s 148 issued - Assessee files huge loss return - AO calls for records which assessee fails to furnish as the same was seized by the police authorities - additions made - CIT(A) estimates nominal income - Tribunal goes with the CIT(A) - AO initiates penalty proceedings - CIT(A) deletes the same on the ground that penalty cannot be levied on estimated income - Tribunal again upholds the CIT(A) order - held, no infirmity in Tribunal's decision - Revenue's appeal dismissed

[2010-TIOL-107-HC-ALL-IT](#)

M/s Gopaliji Ambika PD Vs CIT (Dated: January 4, 2010)

Income tax - valuation of closing stocks - assessee is a trader - deals in spices - AO finds stocks shown is less than the stocks pledged to banks - assessee pleads the excess stock belongs to others - AO makes additions - CIT(A) orders for valuation of excess stock either at cost price or market price whichever is lower - Tribunal confirms the CIT(A) order - held, no error in the CIT(A) order - assessee's appeal dismissed

[2010-TIOL-106-HC-HP-IT](#)

CIT, Shimla Vs M/s Teknika Components (Dated: January 5, 2010)

Income Tax - Sec 263, 80IA - Assessee is a partnership firm - derives income from manufacture and sale of main shaft of watches, latch links for MCBs and weighing scale parts. On sales, a gross profit @ 75.8% is declared - claims Sec 80IA deduction - AO disallows benefits on interest income - CIT invokes powers u/s 263 - Tribunal sets aside the CIT order - held,, it was not that the Commissioner had concluded that the return submitted by the Assessee firm was incorrect and, therefore, had exercised its revisional jurisdiction accordingly, but it had only concluded that keeping in view the infirmities in the return submitted by the Assessee, the case deserves to be considered afresh by the AO, and such findings, cannot be said to be incorrect in any manner. While exercising its appellate jurisdiction, the ITAT had set aside the order of the CIT without giving its detailed findings in regard to the observations of the CIT and accordingly the order passed by the ITAT is liable to be set aside .Revenue Appeal allowed.

[2010-TIOL-105-HC-AHM-IT](#)

Shakti Cargo Movers Pvt Ltd Vs ACIT (Dated: January 19, 2010)

Income tax - AO makes addition on the basis of fall in net profit ration as compared to last year - CIT(A) gives detailed findings and holds the additions are unsustainable - Tribunal summarily rejects the CIT(A) findings and reverses that order - held, Tribunal has not discussed the findings of the CIT(A) and why are they not sustainable - order set aside - matter remanded for passing a speaking order - Assessee's appeal allowed

[2010-TIOL-104-HC-KAR-IT](#)

CIT, Bangalore Vs M/s Karnataka State Constructions Corpn Ltd (Dated: December 3, 2009)

Income tax - Assessee is into construction - gets a contract from the Central Govt - gives the work to a sub-contractor - dispute arises between the assessee and its sub-contractor - arbitration - interim order passed, directing the assessee to make some payments - assessee claims deduction - Revenue disallows on the ground that the same can be claimed from the Central Govt - Tribunal allows the assessee's appeal - held, if the final arbitration order goes in favour of the assessee it would recover the intermi award paid to the sub-contractor and the same would be brought to the book - deduction cannot be disallowed - Revenue's appeal dismissed

[2010-TIOL-101-HC-DEL-IT](#)

Smt Urmila Gambhir Vs CIT, New Delhi (Dated: December 23, 2009)

Income tax - Sec 132, 158BC - Assessee is a company - Revenue searches its office premises and residential premises of its promoters - loose paper seized - AO makes additions for purchase of land out of unexplained investment - CIT(A) agrees with the AO - Tribunal examines the evidence and papers and upholds the additions - held, going by the findings of three concurrent authorities that the disputed sheet of papers relates to actual transactions and the fact that the assessee fails to establish its proposition relied on, the loose papers cannot be treated as a dumb paper - additions are sustainable - Assessee's appeal dismissed

[2010-TIOL-100-HC-MUM-IT](#)

CIT, Mumbai Vs M/s TIPS Industries P Limited (Dated: January 22, 2010)

Income tax - Sec 132, 69C - Assessee is a manufacture of blank audio cassettes and musical software - Revenue conducts search operation u/s 132 - loose papers seized from Director's premises - Statements recorded - AO makes additions for unaccounted expenditure claimed to have been incurred by the assessee towards clearing wage bills during the relevant FY - CIT(A) goes with the AO - Tribunal partly allows the assessee's appeal - held, the AO disbelieving the claim of the assessee is self defeating, because, if the notings are not the expenditure incurred by the assessee then no addition of undisclosed income could be made in the first instance. The Tribunal has held that having made addition on the basis that the unaccounted expenditure was incurred out of the unaccounted income, it was not open to the assessing officer to hold that the source of expenditure was not explained, especially when the seized papers itself contain the names of the persons who are claimed to be the employees of the assessee - no infirmity in Tribunal's order - Revenue's appeal dismissed

[2010-TIOL-99-HC-MUM-IT](#)

CIT Vs M/s Contractor & Company (Dated: January 4, 2010)

Income tax - Sec 55(2)(b)(1) - capital gains - assessee buys a theatre with land and machinery in 1948 - attributes major chunk of consideration towards building and claims depreciation - sells the same in 1995-96 - attributes major chunk of sale consideration towards land - long-term capital gains - re-assessment - AO holds since assessee has claimed depreciation it is not entitled to claim benefit of cost indexation and the fair market value - CIT(A) holds since the assessee has claimed depreciation on machinery and building, the cost of acquisition to be treated as Nil - Tribunal holds the assessee is entitled to bifurcation of the sale consideration and can also adopt fair market value as on 1st April, 1981 and since the asset was acquired before the date it can adjust it by capital gains indexation factor - it is statutory right which cannot be denied to the assessee - held, no infirmity in the Tribunal's order - Revenue's appeal dismissed

[2010-TIOL-98-HC-HP-IT](#)

Shri Virender Kumar Walia Vs ACIT (Dated: November 30, 2009)

Income tax - Sec 80IA - Assessee is a manufacturer, located in a remote area in a hilly state - for lack of rail network Govt provides transport subsidy - Assessee claims Sec 80IA benefits on the same - AO disallows - Tribunal goes with the AO - held, it is now settled law that for any profit or income to qualify for deduction u/s 80IA, it needs to be operation profits generated out of the business - since freight subsidy is not an operation profit, it is not eligible for deduction - Assessee's appeal dismissed

[2010-TIOL-97-HC-MUM-IT](#)

Madhusudan Shrikrishna Vs M/s Emkay Exports (Dated: January 18, 2010)

Income tax - TDS u/s 194A - sum to be paid on Court decree - whether TDS to be deducted on interest component of the decree amount - held, no TDS to be deducted by defendants - once a decree is passed, it is an order of the court which has to be discharged only on payment of the amount due under the said decree. The debtor, therefore, cannot, deduct tax at source since it is an order and direction of the court and, as such, would not be liable for penal consequences for non-deduction of the tax due. Tax, if payable, can be decided by the Income-tax Officer after the amount is paid to the decree holder.

[2010-TIOL-96-HC-DEL-IT](#)

CIT Vs Goetze India Ltd (Dated: January 20, 2010)

Income tax - Sec 147, 148 - AO reopens assessment after four years to disallow some prior period expenses - assessee contends that AO had made detailed inquiries and it had furnished information as well as answered queries of the AO - alleges mere change of opinion to reopen the case - Tribunal finds application of mind by the AO before allowing the same and lack of new materials indicating escapement of income - rules against the Revenue - on further appeal to the HC - held, no infirmity in the Tribunal's order as there has been no failure on part of the assessee to truly and fully disclose all the information sought by the Revenue - it is a case of mere change of opinion which is upheld by the SC decision in Kelvinator India case ([2010-TIOL-06-SC-IT-LB](#)) - Revenue's appeal dismissed

[2010-TIOL-95-HC-DEL-IT](#)

Ashok Arora Vs CIT, New Delhi (Dated: January 19, 2010)

Income tax - Sec 147, 148, 144 - Writ - Assessee agitates no notice was served - Revenue contends notice was received by somebody in office besides assessee was aware of the notice - held, going by the facts that the AO had disclosed reasons for initiating reassessment but assessee did not file any return and the AO was compelled to make the assessment u/s 144 - Assessee's writ petition dismissed

[2010-TIOL-92-HC-DEL-IT](#)

CIT Vs Woodward Governor India Ltd (Dated: January 19, 2010)

Income tax - Sec 37(1) - Assessee claims deduction for warranty on actual basis as well as the provision for warranty expenses - AO allows deduction for first part but disallows for the provision of warranty expenditure on the ground that it was contingent in nature - Tribunal holds that since the assessee has switched over to new accounting system on accrual basis, the provision for warranty for previous years to be scaled down but is allowable deduction - no infirmity in Tribuna's decision as the HC earlier decision is now confirmed by the Apex Court - Revenue's appeal dismissed

[2010-TIOL-91-HC-DEL-IT](#)

CIT Vs Goyal M G Gases Ltd (Dated: January 18, 2010)

Income tax - Sec 263, 41(1) - Assessee files loss return - AO computes book profits u/s 115JB - CIT invokes powers u/s 263 for alleged exclusion of receipt from non-resident - Tribunal disagrees as the same was credited to the P&L and book profit was computed on the same - held, since no deduction was ever claimed on this loan, cessation of the liability does not attract Sec 41(1) - no infirmity in Tribunal's order - Revenue's appeal dismissed

[2010-TIOL-90-HC-MUM-IT](#)

Mr Bhavesh Developers Vs AO, Mumbai (Dated: January 12, 2010)

Income tax – Reassessment - power u/s 147 cannot be sustained on a mere change of opinion - conditions should be strictly fulfilled before using such exceptional power – assessment can be challenged by writ: an exceptional power has been conferred upon the Revenue to reopen an assessment after a lapse of four years. The conditions which are prescribed by the statute for the exercise of such a power must be strictly fulfilled and in their absence, the exercise of power would not be sustainable in law. Though an attempt was made on behalf of the Revenue to urge that the assessee should be relegated to the ordinary remedy of an appeal against the order of the assessment, we are of the view that a petition under Article 226 of the Constitution would be maintainable for questioning reopening of the assessment in a case such as this where the preconditions for the exercise of the power have not been fulfilled. recourse to the power under Section 147 cannot be sustained on a mere change of opinion, there being no failure of the assessee to disclose fully and truly, all material facts necessary for assessment.

[Also see analysis of the order](#)

[2010-TIOL-88-HC-AHM-IT](#)

CIT Vs Jay Ambe Sugar Candy Works (Dated: January 11, 2010)

Income tax - Assessee makes purchases - AO disallows for the lack of verifiable facts - CIT(A) makes part disallowance - Tribunal allows the assessee's appeal on the ground that the assessee had made genuine purchases for which it made payments through bank accounts - held, since the Tribunal has given a finding of facts, it does not call for interference - Revenue's appeal dismissed

[2010-TIOL-87-HC-ALL-IT](#)

M/s Injecto Plast Vs UoI (Dated: December 8, 2009)

Income Tax - Sec 154 - Assessee challenges the rectification order - During the pendency of appeal, the petitioner opts for KVSS scheme. On the basis of the declaration furnished by the petitioner, the authority concerned passes order holding that the amount payable at the rate of 35% of the disputed income. Assessee Challenging the computation part on the question that whether the amount deposited by the petitioner before the date of declaration in pursuance of the assessment order, which is subject matter of appeal, is liable to be adjusted towards the tax due first or towards the accrued interest - Held, the petitioner cannot now take a different stand after adjustment in the record has been made as per instruction of the petitioner. After declaration having been filed under KVSS, the appeal preferred by the petitioner loses its efficacy and it shall be treated to have been decided in terms of KVSS. KVSS

is a special scheme. It talks about the disputed tax which means the tax unpaid as on the date of making the declaration u/s 88. It contemplates an accomplished fact and does not contemplate a situation which may take place in future. The tax which remains unpaid on the date of making of declaration u/s 88 is an accomplished fact which has to be taken into consideration for the purposes of the said scheme and not any other figure which might or ought to have remained unpaid. There being no dispute that the adjustments in the record were made as per the instructions given by the petitioner through two challans, it is no longer open to contend otherwise for the purposes of the said scheme. No illegality or legal infirmity in the impugned order. Writ Petition dismissed.

[2010-TIOL-86-HC-ALL-IT](#)

CIT, Varanasi Vs M/s Varanasi Auto Sales P Ltd (Dated: January 6, 2010)

Income tax - Sec 32(1) - Assessee-company claims depreciation on trucks registered in the name of Director - Revenue disallows - Tribunal allows the appeal - held, since the vehicles have been purchased in the name of the Director only for convenience sake and rents have been credited to the company's account and even tax has been paid on the same, depreciation cannot be disallowed now as it is in effective possession of the company - Revenue's appeal dismissed

[2010-TIOL-82-HC-DEL-IT](#)

CIT Vs Saden Vikas India Ltd (Dated: January 15, 2010)

Income tax - Sec 41(1) - Assessee receives a manufacturing order from an automobile company - also receives a sum as advance towards capital cost to be incurred for putting in place the infrastructure - immediately after the advance payment was made, the auto company runs into labour unrest - later assessee is intimated to subscribe debentures of sister concern of the auto company for exactly the sum advanced earlier - assessee follows the arrangement - after some time the relationship between the auto company and its sister concern runs into trouble - assessee receives no return on investment and writes off the sum invested - AO makes disallowance - CIT(A) and Tribunal go with the assessee - held, no infirmity in the Tribunal's order as the assessee never took any benefit of the advance given to it nor it was an income for the assessee - writing off the sum only leads to cessation of liabilities - Revenue's appeal dismissed

[2010-TIOL-81-HC-MUM-IT](#)

CIT, Mumbai Vs M/s Rachna Udhog (Dated: January 13, 2010)

Income tax - Sec 80IB - Assessee claims deduction for Duty Drawback, Export Entitlement, DEPB Licence and exchange rate difference - AO disallows but Tribunal allows them - held, in view of Apex Court decision in Liberty India case, deduction is not allowable on DEPB, Duty Drawback and Export Entitlement - however, benefits are admissible for exchange rate difference because it is directly linked to the sales

proceeds of goods manufactured by the industrial undertaking - Revenue's appeal partly allowed

[2010-TIOL-80-HC-KAR-IT](#)

M/s Davangere Maganur Bassappa Vs ITO, Davangere (Dated: December 3, 2009)

Income tax - Capital gains - Assessee is a partner in a partnership firm - dissolution of the firm - distribution of assets - AO levies capital gains - CIT(A) confirms the same - Tribunal goes with the CIT(A) and also dismisses the plea for quantification of capital gains as the assessee fails to challenge the same in appeal memo - held, since the assessee has not challenged the quantification of capital gains done by the CIT(A) which also granted some relief, the same cannot be done at the HC stage - assessee's appeal dismissed

[2010-TIOL-78-HC-MAD-IT](#)

CIT Vs Thiruvengadam Investments Pvt Ltd (Dated: December 1, 2009)

Income tax - Sec 50C - Assessee is a property promoter - sells a property taken on power of attorney - sets off earlier years' losses and claims capital loss - AO goes by the value taken for registration of the property which is more than the actual transaction - held, since the property was taken on power of attorney and it was never a capital asset for the assessee, Sec 50C is not attracted in this case - Revenue's appeal dismissed

[2010-TIOL-77-HC-ALL-IT](#)

ATS Infrastructure Ltd Vs ACIT (Dated: January 13, 2010)

Income tax - Sec 142(2A) - AO issues an order for special audit with prior approval of the CIT - assessee pleads for assigning reasons - AO fails to do so - held, reasons must be recorded in the order to show that there is application of mind on the part of the officer concerned on the basis of the material available on record and in the absence of reasons in the order for the direction as contemplated under Section 142(2)(a), the order vitiates in law and is not sustainable - Assessee's appeal allowed.

[2010-TIOL-76-HC-MUM-IT](#)

CIT Vs M/s Syntel Limited (Dated: December 15, 2009)

Income tax - Sec 80IB - Assessee claims exemption for exchange fluctuation gain - Revenue denies citing Apex Court decision in Liberty India Ltd - held, exchange rate fluctuation gain is not within the teeth of the law laid down by the SC - benefits allowable - Revenue's appeal dismissed

[2010-TIOL-74-HC-DEL-IT](#)

Messe Dusseldorf India Pvt Ltd Vs DCIT, New Delhi (Dated: December 22, 2009)

Income tax - Writ - Transfer Pricing - Sec 92, 144C - TPO determines Arm's Length Price (ALP) in respect to international transaction for 'representation services' - AO prepares Draft Assessment order u/s 144C on the basis of TPO report - whether assessee is to be given hearing opportunities to rebut the basis of assessment - Whether Dispute Resolution Panel to allow assessee to rebut the grounds taken by the AO to make additions

Assessee alleges that it was asked to furnish details of the transaction but not allowed to confront the basis on which the TPO makes adjustment - assessee insists Sec 92CA(3) casts on obligation on the TPO to afford a personal hearing before he proceeds to pass an order determining the ALP - held,

++ a plea can be taken by the petitioner by filing objections to the order of the TPO as well as Draft Order prepared by the Assessing Officer. After the Draft Order is framed by the Assessing Officer the assessee has remedy to approach the Dispute Resolution Panel provided under Section 144C of the Act. The said Dispute Resolution Panel, before considering the matter has to be guided by Sub-Section 6 of Section 144C of the Act.

++ The petitioner thus shall be entitled to raise all possible objections and along with that furnish necessary evidence as well to rebut the Report of the TPO as Draft Assessment Order. Since such a remedy is available to the petitioner, it is not necessary to go into this aspect in the present Writ Petition.

++ the Dispute Resolution Panel shall, positively, deal with the objections filed by the petitioner along with support evidence furnished by him to rebut the basis adopted by the Transfer Pricing Officer (TPO) to arrive at arm's length price (ALP) and thereafter only it shall pass speaking orders.

[Also see analysis of the Order](#)

[2010-TIOL-73-HC-P&H-IT](#)

CIT, Ludhiana Vs Sh Satinder Pal Singh (Dated: January 7, 2010)

Income tax - Sec 2(14)(iii) - agricultural land as capital asset - whether distance notified in the gazette from the municipal areas to be measured by approach road or as per straight line distance on a horizontal plane or as per crow's flight? - Tribunal holds distance is to be measured in terms of road distance - held, since the municipal areas are notified based on urbanisation, Sec 2(14) is very clear that it should be measured as per road distance - no infirmity in Tribunal's order - Revenue's appeal

dismissed

[2010-TIOL-72-HC-MUM-IT](#)

CIT, Pune Vs Kirti Chandulal Oswal (Dated: January 4, 2010)

Income tax - Sec 158BB - Assessee trades in jewellery - Revenue conducts a search of business and residential premises of the assessee - notice u/s 158BC - assessee declares NIL undisclosed income - Revenue meanwhile finds some loose papers during an independent search on a third party which links the assessee - makes additions - Tribunal deletes the additions on the ground that there is no solid evidence to link the assessee to the paper found during the search on a third party - held, it is a pure finding of facts - no substantial question of law involved - Revenue's appeal dismissed

[2010-TIOL-70-HC-AHM-IT](#)

Ashima Ispat Private Limited Vs DCIT (Dated: December 14, 2009)

Income tax - Sec 40A(3), 147/148, 133 - AO issues notice u/s 148 - assessee challenges the same on the grounds that the satisfaction was recorded by some other officer but notice being issued by another officer and also the fact that the assessee did not make any purchases in cash from the alleged parties mentioned in the notice - held, given the fact that during a Survey it came to the notice of the Revenue that the assessee made purchases from some parties in Mumbai but managed bills from the local parties by paying in cash and statements in this regard being recorded, assessee's argument does not hold water and appellate remedy is available to it - secondly, the AO who has issued the notice has clearly noted that he agrees with his predecessor who had recorded satisfaction for re-assessment and has also recorded the same reason, notice u/s 148 is not vitiated - Assessee's petition dismissed

[2010-TIOL-65-HC-MAD-IT](#)

CIT, Trichy Vs M/s Lakshmi Vilas Bank (Dated: December 18, 2009)

Rectification of mistake – error apparent on record – 'record' not defined – includes the record available with AO: The expression used in Section 154 of the Income Tax Act regarding the mistake apparent from the record will have to be construed to be a mistake which is very clear, distinct and apparent. The said mistake should be manifest and could be identified by a mere look and which does not need a long drawn out process of reasoning. It is no doubt true that a mere mistake by itself cannot be a ground to invoke Section 154 of the Income Tax Act 1961. It is also true that an issue which is debatable also cannot be decided under Section 154. However when the mistake is glaring and in a case where facts are not in dispute then the said mistake being one apparent on the fact of the record will have to be rectified under Section 154

The word 'record' has not been defined under Section 154 or in the defined Section. Therefore the said word will have to be given a wider import by including the record that is available with the assessing officer. It is neither necessary nor possible to set out exhaustively all the material that can possibly be regarded as forming part of the "record" for the purpose of examination under section 154(1) of the Act. The expression used in Section 154 of the Income Tax Act regarding the mistake apparent from the record will have to be construed to be a mistake which is very clear, distinct and apparent. The said mistake should be manifest and could be identified by a mere look and which does not need a long drawn out process of reasoning. It is no doubt true that a mere mistake by itself cannot be a ground to invoke Section 154 of the Income Tax Act 1961. It is also true that an issue which is debatable also cannot be decided under Section 154. However when the mistake is glaring and in a case where facts are not in dispute then the said mistake being one apparent on the fact of the record will have to be rectified under Section 154. The word 'record' has not been defined under Section 154 or in the defined Section. Therefore the said word will have to be given a wider import by including the record that is available with the assessing officer.

It is neither necessary nor possible to set out exhaustively all the material that can possibly be regarded as forming part of the "record" for the purpose of examination under section 154(1) of the Act.

[Also see analysis of the Order](#)

[2010-TIOL-64-HC-MAD-IT](#)

CIT, Madras Vs M/s V Ramakrishna & Sons Limited (Dated: December 23, 2009)

Income Tax - Section 36 (1)(vii) - Assessee is engaged in money lending business - AO disallows the claim of the bad debts on the ground that when the interest is not received for earlier A.Y, the payment of further advances in favour of the subsidiary company cannot be construed as an advancement of loans during the course of business and therefore the Assessee not entitled to claim bad debt - AO also holds that the amount having been given only to tide over the financial difficulties of the subsidiary company, the same cannot be construed as a loan or advance made in the course of business - CIT (A) allows assessee's appeal by holding that there is no dispute regarding the genuineness or bonafides of the transactions, the fact that for the subsequent advances no interest received by itself cannot be a ground for disallowance as bad debt and the amount having been given towards commercial expediency in order to protect the interest of the Assessee to prop-up the sagging business of the subsidiary company, the same would amount to a bad debt allowable u/s 36 (1) (vii) - Tribunal confirms CIT(A) order - Held, both the First Appellate Authority as well as the Tribunal have considered the materials on record and came to the conclusion that the transactions involved are true and genuine. They have also held that the advances have been made during the course of the business and they have become irrecoverable as bad debts and hence the Assessee is entitled to the benefit u/s 36 (1) (vii). The said decision being based upon findings of facts, the same cannot be agitated before this Court. The question as to whether a debt had become bad or not is a pure question of fact and therefore the same cannot be construed as a question of law. Revenue's appeal dismissed both on facts and law.

[2010-TIOL-63-HC-HP-IT](#)

M/s D M Ajay Kumar Vivek Kumar, A B Kullu Vs ACIT (Dated: December 15, 2009)

Income tax - Sec 144 - Assessee deals in herbs - files return of income - AO asks for purchase vouchers of herbs and names of sellers - assessee fails to provide supporting documents - AO rejects the books of accounts and makes additions based on best judgement method - CIT(A) deletes addition - Tribunal goes by the Apex Court's decision in the case of Kachwala Gems and allows tax at the rate of 33% of profit - held, since the assessee fails to support its claims, and the fact that the best judgement method involves some elements of guess work, no interference to Tribunal's order is called for - Assessee's appeal dismissed

[2010-TIOL-62-HC-MUM-IT](#)

CIT Vs M/s Automann India Pvt Ltd (Dated: January 5, 2010)

Income tax - business income - assessee lets out business for three years - receives conduction royalty - AO treats the same as Income from Other Sources' on the ground that the entire business was let out and the assessee does not intend to carry on with the business in future - Tribunal finds that the assessee had kept effective control of the business to itself and the income was business income - held, in view of licences and permits which remained in the name of the assessee, and the conductor agreeing to vacate the premises with its equipment after three years, Tribunal is right in concluding that it is business income - Revenue's appeal dismissed

[2010-TIOL-61-HC-KAR-IT](#)

M/s H M Constructions Vs Union Of India Ministry Of Finance , New Delhi (Dated: December 8, 2009)

Income tax - search u/s 132 - Revenue conducts search of assessee's premises - documents seized - assessment order passed and tax is paid - second search is conducted - documents again seized - release of documents - held, since assessment orders are passed, and documents are no longer required for any other purpose, Revenue directed to release them within two months

[2010-TIOL-58-HC-KAR-IT](#)

CIT, Bangalore Vs M/s Motor Industries Co Ltd (Dated: December 10, 2009)

Income tax - Sec 80HHC, 80HHHE - assessee is a manufacturer of goods - part of its production is exported, and partly sold in the domestic market - sale of scrap - Revenue insists on including the value of scrap sale in total turnover - held, as per the definition of export turnover and total turnover as defined under Sec. 80HHC explanation (b) and (ba), it is clear they are different and distinct turnovers. The export turnover includes only the value received by selling the products outside India. But total turnover includes the turnover of the assessee which is inclusive of export turnover and also the domestic turnover - however, matter remanded for excluding

the excise duty paid on the scrap sale - Revenue's appeal allowed

[2010-TIOL-57-HC-MAD-IT](#)

CIT, Chennai Vs M/s Indian Potash Ltd (Dated: December 22, 2009)

Income tax - Sec 115JAA - MAT credit - assessee avail MAT credit before paying interest u/s 234B, 234C - AO disallows - Tribunal allows the assessee's appeal - held, the intention of the legislature is to give tax credit to tax and not to the tax and interest. Once the intention is clear, the revenue cannot rely on the Form-I to say that the MAT credit under Section 115JAA should be given only after tax and interest. Rule 12(1)(a) and Form-I cannot go beyond the provisions of the Act. Form-I cannot lay down the order of priority of adjustment of TDS, advance Tax, MAT credit under Section 115JAA which is contrary to the provisions of the Act - Revenue's appeal dismissed

[2010-TIOL-56-HC-DEL-IT](#)

CIT Vs SMCC Construction India (Dated: January 15, 2010)

Income tax - Sec 40(a)(i) - Assessee enters into agreement with non-resident for providing technical services - decide to defer the payments - claims deduction for the same in the current year - AO makes disallowances on the ground that the expenses related to the prior period, and the same cannot be allowed in the current year - CIT(A) and Tribunal allow the same - held, as per the provisions of Sec 40(a)(i), the deduction is to be allowed in the year in which the tax is paid - since the tax is paid in the current year, deduction is admissible - Revenue's appeal dismissed

[2010-TIOL-53-HC-P&H-IT](#)

Dinesh Sharma Vs CCIT (Dated: January 12, 2010)

Income tax - Sec 158BFA(1)(a), 245D(4) - Search - Assessee files return after expiry of statutory period - block assessment order passed - assessee moves Settlement Commission - Commission holds assessee is liable to pay interest - assessee files application for waiver of interest before CCIT - application rejected on the ground that the Commission's order cannot be amended as per provisions of Sec 245(1) - held, there is no infirmity in the CCIT's view as the Commission is not subordinate to the Board and once it orders levy of interest, it cannot be waived off by amending its order - assessee can approach only the Commission for such waiver if any legal remedy is available as per the law - Assessee's appeal dismissed

[2010-TIOL-52-HC-HP-IT](#)

M/s D J Stone Crusher Vs CIT (Dated: December 16, 2009)

Income tax - Sec 80IA, 80IB - Assessee runs stone crushers - claims its activity of crushing boulders and stones into grit is a process of 'manufacture' - deduction of profit claimed u/s 80IA - AO disallows - held, issue is no longer res integra as crushing of boulders and stones into requisite size of gitti or bajri either mechanically or electrically does amount to manufacture as the resultant article has its own commercial identity, character and use - Assessee's appeal allowed

[2010-TIOL-51-HC-MUM-IT](#)

M/s Shivashahi Punarvan Prkalp Ltd Vs UoI (Dated: January 5, 2010)

Income tax - Dispute between Income Tax and a State PSU – approval of the Committee on Disputes not required

[2010-TIOL-50-HC-DEL-IT](#)

CIT Vs SMC Credit Limited (Dated: January 7, 2010)

Income tax - business loss - Assessee deals in shares - holds certain shares as investment and also as stock in trade - claims deduction for trading loss - AO disallows - CIT(A) deletes disallowance - Tribunal remands - AO goes by entry treatment in books and again treats it as capital loss - Tribunal holds that the nomenclature of the entry will not decide the actual character of the transactions - since the frequency of trading in shares is very high, it is clearly stock in trade and the AO should have allowed it as business loss - held, it is a finding of facts - no substantial question of law involved - Revenue's appeal dismissed

[2010-TIOL-49-HC-DEL-IT](#)

CIT Vs Info Vergix Technologies Limited (Dated: January 12, 2010)

Income tax - Assessee is into IT-enabled services business - treats certain sum as deferred revenue expenditure in books but claims the same as revenue expenditure in return - AO and CIT(A) disallow the same - Tribunal allows it - held, although a component of the total expenditure is pre-commencement charges but there is no discussion about the same in the Tribunal order - however, since the tax effect is low, Revenue's appeal is dismissed

[2010-TIOL-48-HC-DEL-IT](#)

CIT Vs Dharam Shila Cancer Research Foundation (Dated: January 11, 2010)

Income tax - Sec 11, 12 - Assessee is a registered as a scientific research society - runs a hospital - claims exemption for its income - AO disallows on the ground that it provides free services only to doctors and staffs and their relatives and their service charges are almost equal to hospitals run on commercial basis - CIT(A) disagrees - Tribunal finds the adverse notings of the AO are not based on facts - held, no infirmity in Tribunal's order - no substantial question of law involved - Revenue's appeal dismissed

[2010-TIOL-47-HC-MAD-IT](#)

M/s Super Spining Mills Limited Vs ACIT, Coimbatore (Dated: December 22, 2009)

Income tax - Sec 37 - Assessee is into manufacture and sale of cotton and blended yarn - claims 'replacement of plant and machinery' as revenue expenditure - AO partly allows - CIT(A) treats such expenditure as revenue in nature - Tribunal goes with the Revenue - held, the issue is to be decided in the light of SC's recent decisions on this issue - matter remanded to AO for fresh examination

[2010-TIOL-44-HC-ALL-IT](#)

CIT, Kanpur Vs M/s Saran Engineering Co (Dated: December 16, 2009)

Income tax - Sec 37(1), 30(a)(ii) - Current repairs - assessee is a sugar factory - gets roof of large industrial shed replaced by new GC Sheets - claims deduction for the same in two AYs because the suppliers raise the bills in two years - Revenue holds it as capital expenditure - Tribunal allows the assessee's appeal - held, it is found that the assessee has replaced the worn out GC Sheets in the relevant AYs, as necessitated by the day to day wear and tear. If it is major repair, it may involve considerable amount of money. But the amount of money spent alone cannot be a factor to determine whether the expenditure falls under "Current Repairs" or not. Since the expenditure is incurred only to preserve and maintain the existing asset, it is allowable deduction - Revenue's appeal dismissed

[2010-TIOL-43-HC-MUM-IT](#)

Mrs Gauri Deepak Patel Vs New India Assurance Co Ltd (Dated: December 17, 2009)

Income tax - Section 194A(3) (ix) - Applicants are the widow, two minor children and the mother of the deceased - Motor accident - award - TDS deduction on interest on award money - held, Insurance Company directed to spread the interest amount over to the relevant financial years for the period from the date of filing the claim petition till the date of deposit, and if interest in any FY exceeds Rs 50000, TDS to be deducted - in case of refund in the case of any of the applicants, Revenue directed to do the needful in expeditious manner - Applicants' appeal allowed

[2010-TIOL-42-HC-DEL-IT](#)

CIT, Delhi-IV Vs Industrial Finance Corporation Of India Ltd (Dated: September 4, 2009)

Income Tax Act – Section 37(1) – Forward Contracts – Year of deductibility – Assessee entered into forward contracts for purchase of foreign currency – Held that difference between forward contract rate and exchange rate on date of entering into contract has to be recognized as income or expense since it is ascertained and definite as per the terms of the contract – Held further that the expense is to be allowed as a business expense in the year of entering into the forward contract although as per the terms of the contract part payment is to be made in the subsequent year.

[2010-TIOL-41-HC-MAD-IT](#)

CIT, Chennai Vs M/s Bharat Overseas Bank Ltd (Dated: December 22, 2009)

Income tax - Sec 244A, 234D - Assessee is a public sector bank - AO disallows a part of interest u/s 244A and levies interest u/s 234D - CIT(A) and Tribunal disagree with the AO - held, since the Revenue has not taken clearance from the CoD, the case is dismissed but the Revenue has liberty to come back to the court after obtaining the clearance - Revenue's appeal dismissed

[2010-TIOL-40-HC-MAD-IT](#)

Coimbatore Cosmopolitan Club Vs ACIT, Coimbatore (Dated: December 22, 2009)

Income tax - Sec 11, 143(3) - Assessee is a registered company under Sec 25 of the Companies Act - claims exemption for income arising from FDs with banks and hall charges for dinner, mike charges, guest charges etc on the principle of mutuality - AO disallows - CIT(A) and Tribunal agree with the AO - held, issue was settled by the Division Bench in Madras Gymkhana Club case ([2009-TIOL-415-HC-MAD-IT](#)) and the assessee is not eligible to claim exemption u/s 11 for income arising from non-members - Assessee's appeal dismissed

[2010-TIOL-39-HC-KAR-IT](#)

CIT, Mangalore Vs M/s Udupi Builders Pvt Ltd (Dated: December 1, 2009)

Income tax - revenue vs capital receipt - assessee receives subsidy from the State as part of an incentive package to set up a hotel - AO treats the same as revenue receipt - CIT(A) disagrees - Tribunal goes with the CIT(A) order - held, the state gives subsidy to encourage the assessee to set up a hotel, and the subsidy is paid depending on the budgetary allocation - it has been seen that the State sometimes releases the sum after 10 years, depending on the fund availability - cannot be treated as revenue receipt - Revenue's appeal dismissed

[2010-TIOL-36-HC-MAD-IT](#)

CIT, Chennai Vs M/s Shriram Engineering Construction Company Limited (Dated: December 21, 2009)

Order under section 263- Limitation period- whether from the date of original order of assessment or from date of rectification thereof under section 154- doctrine of merger when applicable

For the assessment year 2000-01, the assessee filed a return of admitting NIL income. The assessment was subsequently completed under Section 143(3) on 31.3.2003 at Rs.1,21,82,188/-, disallowing deduction claimed u/s 80IA relating to Water Treatment Projects. However, a sum of Rs.3,14,46,497/- being the profit on Water Supply Project was allowed as deduction u/s 80IA but was subsequently modified vide order under Section 154 dated 19.06.2003 and the deduction was restricted to Rs.2,89,93,730/-.

[2010-TIOL-35-HC-MAD-IT](#)

CIT, Madurai Vs M/s Ramco Industries Ltd (Dated: December 7, 2009)

Income Tax - Sec 10B, 80IB and 234D - Assessee is in the business of manufacturing and sale of fibre cement sheet, accessories, fibre cement pipes and cotton yarn - reassessment - AO withdraws a sum which he considers as excess depreciation granted on the export oriented unit, and also restricts deduction u/s 80IB - CIT(A) deletes disallowance of depreciation on the ground that the method followed by the assessee is correct and the audit party committed a mistake - Tribunal goes with CIT(A) - Held, Revenue is not able to establish that the view taken by the CIT(A) and confirmed by the Tribunal is not in accordance with law - no substantial question of law involved - Revenue's appeal dismissed

Section 234-D - On the issue of Tribunal holding that the interest u/s 234-D cannot be levied - Held, from the reading of section, it makes it clear that section 234D would apply only in respect of refund made u/s 143(1) - No illegality or irregularity in the order passed by the CIT (A) - Revenue's appeal dismissed.

[2010-TIOL-34-HC-DEL-IT](#)

Jagjit Pal Singh Anand Vs CIT, Delhi (Dated: November 30, 2009)

Income Tax - Sec 147 - Assessee is an individual - files return - re-assessment - reason given for re-assessment is the information contained in the adjudication order passed by the Collector of Customs - additions made - CIT(A) sustains the additions - Tribunal dismisses the appeal - held, no infirmity in the Tribunal's order based on settled law

Section 69 - On the issue of additions made for unexplained investment and the same being upheld by the Tribunal - Held, the finding recorded by the Commissioner of Customs and upheld by the CEGAT amply depicts that it was the Assessee who had imported the aforesaid material and undervalued the same Therefore, addition u/s 69 could validly be made. Assessee's appeal dismissed

[2010-TIOL-33-HC-HP-IT](#)

Spray Engineering Devices Ltd Vs ACIT (Dated: November 7, 2009)

Income tax - Sec 80IB - Assessee manufactures energy saving devices - claims deduction for modvat credit and installation and erection charges earned for plants and machinery sold to customers - Revenue disallows - held, since modvat credit lying in account is something which was earned by paying excise duty on inputs utilised for manufacture of finished goods, it is derived from the business itself. The assessee cannot sell the modvat credit. It can utilise it only for paying excise duty on goods manufactured by the undertaking. Similarly, the erection charges are earned on plant and machinery manufactured and sold to customers. It is also derived by the business - deduction is admissible to the assessee - Assessee's appeal allowed

[2010-TIOL-32-HC-P&H-IT](#)

CIT , Faridabad Vs Smt Sita Devi Juneja (Dated: December 2, 2009)

Income tax - Sec 41(1) - Assessee's balance-sheet shows outstanding sundry credit balances - AO finds such liabilities have been there for the past six years and there is no trace of the creditors - invokes Explanation 1 to Sec 41(1) to treat the same as deemed income - CIT(A) and Tribunal go with the assessee - held, merely because such liability is outstanding for the last six years, it cannot be presumed that the said liabilities have ceased to exist. It is also conceded position that there is no bilateral act of the assessee and the creditors, which indicates that the said liabilities have ceased to exist. In absence of any bilateral act, the said liabilities could not have been treated to have ceased. Revenue's appeal dismissed

[2010-TIOL-31-HC-MAD-IT](#)

CIT, Coimbatore Vs M/s Shiva Texyarn Limited (Dated: December 22, 2009)

Income tax - Sec 115JA - Assessee deals in hire purchase, financing and equipment leasing - admits NIL income u/s 115JA after setting off of brought forward losses - AO redetermines the income and raises demand - CIT invokes powers u/s 263 - directs AO to add back provision for non-performing assets and investments - Tribunal sets aside the order - held, in view of the Apex Court decision in HCL Comnet ([2008-TIOL-182-SC-IT](#)) , Revenue has no case - Revenue's appeal dismissed

[2010-TIOL-30-HC-HP-IT](#)

CIT, Shimla Vs M/s Baghat Urban Cooperative Bank Ltd (Dated: December 9, 2009)

Income tax - Sec 80P(2)(a)(i) - Assessee is a registered cooperative bank - claims exemption for income earned on non-SLR reserves - Revenue disallows - held, the first word used by the Legislature is attributable, which is much wider in scope than the word derived. The second phrase used is any one or more of such activities. Any banking business providing credit facilities to its members and investing the sums deposited by the members of the society is part of banking business. The investment of the funds by the banks including the non reserves were part of the banking activities since no bank would like its reserve funds to remain idle and not earn any interest. This is not only prudent business management but is also a part of the activity of banking. Therefore, the interest earned on such deposits is directly attributable to the business of banking. Revenue's appeal dismissed

[2010-TIOL-28-HC-MAD-IT](#)

Noorul Islam Educational Trust Vs CIT (Dated: December 11, 2009)

Income Tax – Transfer of case from one AO to another – both the Commissioners should agree, assessee must be given reasonable opportunity and valid reasons for transfer must be stated in the order: A conjoint reading of section 124 & 127 2((a) & (b) of the Income Tax, 1961 reveals that in the case of transfer of case from one Assessing Officer to another Assessing Officer, who are under the control of different Commissioners, the statutes requires compliance of three requirements:

[i] that both the transferring Commissioners and the Commissioner within whose jurisdiction, the case is to be transferred must agree for the transfer.

[ii] The assessee must be given reasonable opportunity of hearing; and

[iii] The reason for transfer should be recorded in the order.

Further, the reasons stated in the impugned order, must be valid reasons justifying the transfer.

[Also see analysis of the order](#)

[2010-TIOL-27-HC-KAR-IT](#)

CIT, Bangalore Vs M/s Karnataka Financial Corpn (Dated: December 4, 2009)

Income tax - Sec 37 - Assessee is a State-owned corporation - AO disallows expenditure incurred for developing 'Model Village' - CIT(A) and Tribunal allow the same - held, no infirmity in the Tribunal's order as the expenditure incurred on construction of a new market to organise self-hel groups is for business promotion - Revenue's appeal dismissed

[2010-TIOL-26-HC-MAD-IT](#)

CIT, Madurai Vs Shri K M Ganesan (Dated: November 30, 2009)

Income tax - Sec 158BD - Assessee is real estate broker - his residential premises are searched u/s 132 - AO issues notice u/s 158BC - later realising that the warrant was not in the name of the assessee, a fresh notice is issue - limitation - assessee alleges that the assessment order passed by the Revenue is time-barred - Revenue calculates the time limit from the date of issue of second notice - CIT(A) and Tribunal go with the assessee's plea - held, merely because a wrong section was quoted it would not vitiate the notice, and if the time limit is calculated from the date of first notice, the assessment is beyond the period prescribed under Section 158 2BE 2(b) - Revenue's appeal dismissed

[2010-TIOL-23-HC-AHM-IT](#)

Ketan Construction Ltd Vs UoI (Dated: December 1, 2009)

Income Tax - Explanation to Sec 80IA (4) - assessee challenges the vires of Explanation inserted by Finance No.2 Act, 2009 to Section 80-IA(4) - pray for stay against respondents giving effect to the provisions of Explanation to Section 80-IA(4) - Held, the challenge to the amendment is the subject matter of the respective petitions, already admitted by this Court and the issue regarding the constitutional validity of the provisions will be considered at the time of final disposal of the petitions. In the present Civil Applications, the prayer for stay against the implementation of the said provision or the suspension thereof cannot be granted. However, if, on the basis of amended provision, the IT Department proceeds to raise any demand, at least to that extent the interest of the petitioners is required to be protected. No stay granted against the further proceedings initiated for assessment and/or reassessment but, if any demand is raised as a result of such action, and if such demand has any nexus with the applicability of Explanation to Section 80IA (4), such should be put in abeyance till final disposal of all these petitions.

[2010-TIOL-22-HC-MAD-IT](#)

CIT, Chennai Vs M/s FL Smidth Ltd (Dated: December 7, 2009)

Income tax - Sec 37 - Assessee manufactures and supplies cement plant, engineering and structural drawings - claims deduction for provision for warranty - AO disallows - held, in view of Apex Court decision in the case of Rotork Controls India Pvt Ltd if the warranty is an integral part of the sale price, the warranty provision is an obligation - deduction cannot be denied - Revenue's appeal dismissed

[2010-TIOL-21-HC-MAD-IT](#)

CIT, Coimbatore Vs The Coonoor Tea Estates Company Ltd (Dated: December 14, 2009)

Income tax - Sec 32 - Assessee is engaged in the business of manufacture and sale of tea - claims depreciation on tea bushes - AO disallows the same on the basis of retrospective amendment done to remove tea bushes from the definition of 'plant' and makes adjustment u/s 143(1)(a) - Tribunal disagrees with the AO - held, it is settled law that where a return is filed, the law applicable would be the law as it stood on the date of filing of the return. The retrospective amendment made to the definition of plant introduced by the Finance Act, 1995 for the assessment year 1994-95 was not available to make the disallowance under prima facie adjustment. No infirmity in Tribunal's order. Revenue's order dismissed

[2010-TIOL-19-HC-KAR-IT](#)

CIT, Bangalore Vs M/s Sunrise Sales Corpn (Dated: November 24, 2009)

Income tax - Sec 132 - block assessment - Revenue alleges Tribunal reversed AO's order without considering the evidence culled during the search and seizure operations and application of mind - held, from Tribunal's order it appears that it has not applied its mind and looked into evidence furnished - issue remanded

[2010-TIOL-18-HC-MAD-IT](#)

CIT, Coimbatore Vs M/s Annamalai Finance Ltd (Dated: November 2, 2009)

Income tax - Sec 145 - Assessee is in lease and finance business - it follows mercantile system of accounting but complies with cash system so far as collection of overdue financial charges on hire purchase and lease transactions go - Revenue for tax on accrual basis - Assessee pleads for cash system - CIT(A) and Tribunal support the plea of the assessee - held, as long as a change in method of accounting does not lead to tax evasion, the Revenue cannot have any grievance - deletions made by the Tribunal upheld - Revenue's appeal dismissed

[2010-TIOL-17-HC-AHM-IT](#)

Bimal Chimanlal Shah Vs DCIT (Dated: September 4, 2009)

Income Tax - Sec 148 - The case of the petitioner selected for scrutiny and assessment framed u/s 143 (3) - Sec 148 notice for re-assessment after 4 years - Assessee submits that from the reasons supplied, it appears that the surrender value of the tenancy rights which has been received by the petitioner and allowed as exempted from the levy of income tax in the original assessment order is sought to be treated as taxable income and, therefore, the impugned notice came to be issued and hence, it is nothing but change of opinion on the part of the Revenue without there being any new information or material coming to his knowledge - Held, when the action itself is without jurisdiction, the ratio of the Apex Court in the case of Calcutta Discount Company Limited is squarely applicable - decision of the Apex Court in GKN Driveshafts (India) Limited does not lay down that when such an objection is in relation to the absence of jurisdiction and the same is revealed ex-facie or apparent on the face of a notice or reasons in support thereof, the assessee has compulsorily to invite an order from the AO in relation to the absence of jurisdiction. The present case also proceeds, more or less, on the same footing of the Bombay High decision in Caprihans India Limited, and this Court arrives at the same conclusion. Assessee's petition allowed.

[2010-TIOL-16-HC-P&H-IT](#)

CIT, Ludhiana Vs M/s Pearl Woolen Mills (Dated: November 12, 2009)

Income tax - Sec 254(2) - Assessee is a manufacturer of woolen yarn - AO makes addition for unaccounted stock pledged with the bank and not accounted for in the books - CIT(A) partly upholds the addition - Tribunal restores the addition made by the AO - Assessee files ROM application u/s 254(2) - Tribunal dismisses it - after nine months a fresh ROM application is filed - Tribunal opts to readjudicate the case - held, Tribunal cannot readjudicate the matter under Section 254 (2). It is well settled that a statutory authority cannot exercise power of review unless such power is expressly conferred. There is no express power of review conferred on the Tribunal. Even otherwise, scope of review does not extend to rehearing of a case on merits - Revenue's appeal allowed

[2010-TIOL-11-HC-MAD-IT](#)

CIT, Chennai Vs M/s Navix Lines (Dated: December 15, 2009)

Income tax - Sec 44B - Assessee is a shipping line - AO makes addition of demurrage charges received - held, issue is no longer res integra as demurrage charges received by the assessee are to be included in the assessee's income as per the Explanation to Sec 44B inserted with retrospective effect from April 1, 1976 - Revenue's appeal allowed

[2010-TIOL-10-HC-HP-IT](#)

CIT, Shimla Vs Shri Janak Raj Bansal (Dated: November 25, 2009)

Income Tax - Deduction u/s 80IA/80IB - On the basis of Apex Court decision in M/s Lucky Minmat case, the Tribunal holds that converting limestone into limestone powder is a manufacturing activity and income derived from such activity is thus eligible for deduction u/s 80IA/80IB - Held, the observation of the Supreme Court cannot be termed to be 'obiter dicta' since the Supreme Court has held that the process of conversion of limestone into lime and lime dust is a manufacturing process. Revenue's appeal dismissed.

[2010-TIOL-09-HC-HP-IT](#)

CIT, Shimla Vs Satluj Jal Vidyut Nigam Ltd (Dated: December 9, 2009)

Income tax - TDS - Sec 201, 201(1A) - Assessee runs a hydro-electric power project - State Govt acquires some land for the project - Assessee pays compensation and interest but fails to deduct TDS - AO raises demand after four years - Assessee pleads demand is time-barred - Revenue argues there is no limitation period for recovering tax u/s 201 and 201(1A) in the I-T Act - held, it is well settled law that even if no period of limitation is prescribed in the Act, the statutory power must be exercised within a reasonable period. Such period has been held to be four years in the case of Income Tax. Since the demand is raised beyond four years period, it is not sustainable - Revenue's appeal dismissed

[2010-TIOL-07-HC-ALL-IT](#)

Smt Neeru Agarwal Vs UoI (Dated: December 18, 2009)

Income Tax - Settlement Commission cannot remand – After Settlement Commission passes an order **no power vests in the assessing authority or any other authority to issue notice for the period and income covered under settlement** – after passing of the order dated 31-3-2008 by the Settlement Commission, no power vests in the assessing authority or any other authority to issue impugned notice in respect of the period and income covered under the order of the Settlement Commission. In case of fraud or misrepresentation of facts, remedy is to approach the Settlement Commission. The Settlement Commission, by para 7 of its order, has not and could not have empowered the income tax authorities to frame another assessment order, while settling the undisclosed income of the petitioner for the period covered by its order, in respect of investment in bonds etc.

[Also see analysis of the Order](#)

[2010-TIOL-06-HC-MAD-IT](#)

CIT, Chennai Vs Smt Tasneem Z Madraswala (Dated: December 7, 2009)

Income tax - Sec 263, 50C (2)(b) - Assessee files return - scrutiny - CIT invokes powers u/s 263 and directs the AO to complete assessment following procedure given in Sec 50C(2)(b) - Tribunal sets aside the order - held, CIT cannot give direction to the AO to complete assessment in a particular manner - no infirmity in Tribunal's order - Revenue's appeal dismissed

[2010-TIOL-05-HC-CHHATTISGARH-IT](#)

CIT Vs Satyanaryan Agrawal (Dated: November 25, 2009)

Income tax - Sec 133A - A Survey conducted and excess stock found - AO makes addition for undisclosed investment - Tribunal disagrees with the AO - held, since both the lower authorities have accepted the assessee's explanation that the assessee's son was out of station and that is why book entry was not updated but the excess quantity was bought from traders and proper cash memo is available - no infirmity in Tribunal's order - Revenue's appeal dismissed

[2010-TIOL-04-HC-KAR-IT](#)

Children's Education Society Vs DCIT (Dated: December 1, 2009)

Income tax - TDS - Assessee is a registered society - runs an education institution - pays rent to building owners - fails to deduct tax at source - AO holds him as assessee-in-default - Assessee argues it is a society and the same is not liable to TDS - also submits that the payees have already paid tax on the payments made and as per the Apex Court's decision in the Hindustan Coca Cola case if the payee has paid the tax, the payer cannot be subject to tax on the same income - held, AO to examine the case afresh in view the Apex Court decision

[2010-TIOL-03-HC-KAR-IT](#)

CIT, Bangalore Vs M/s Wipro Systems (Dated: December 4, 2009)

Income tax - TDS - Assessee-employer pays attire allowance, club membership fee and travel accessories allowance to employees but fails to treat it as perquisites - Revenue for TDS - held, it is already decided by this court that the travel accessories are not perquisites as it is incidental to the work of the company. Club membership if taken in the name of the employee and the same is availed by the employee for personal use it is perquisite. But if it is taken in the name of the employee but is utilised for entertaining guests of the company for business promotion, it is not perquisite. Case remanded for fresh examination

