Consolidated Digest of Case Laws (Oct 2008 to Feb 2009)
Ajay R. Singh, Paras S. Savla, Rahul Hakani and Sujeet Karkala Advocates
Consolidated by Hari Raheja, Advocate

SUBJECT	**SECTION**	**ISSUE**
Accounting – Method of Accounting – S. 145	145	Where there was neither any finding by the Assessing Officer that he was not able to deduce the correct income of the assessee on the basis of the changed method of accounting employed by the assessee, nor there was any evidence to demonstrate that the new method of accounting has not been consistently followed by the assessee, the High Court held that the change in method of accounting from mercantile to cash system was a bona fide change and the change in method of accounting cannot be rejected per se. Echke Ltd. vs. CIT (2008) 5 DTR 1 (Guj.)
Accounting– Construction Works Contract – S. 145	145	The assessee has the option to adopt any recognized method of accounting for his business and the income shall be computed in accordance with such regularly maintained accounting system. MKB (Asia) Pvt. Ltd. vs. CIT (2007) 294 ITR 655 (Guwahati)
Accounts – Completed Contract Method – S. 145	145	In the case of a chit fund following the 'completed contract method of accounting' and offering income at the end of the chit, held, approving the method: (i) Recognition/identification of income under the Act is attainable by several methods of accounting including the completed contract method or the percentage of completion method. (ii) Every assessee is entitled to arrange its affairs and follow either the completed contract method of accounting or the percentage completion method of accounting and the same is binding on the department unless it is shown the chosen method distorts the profits. (iii) Under the mercantile system of accounting, the matching of expenses and revenue (matching concept) is required to be done on accrual basis. (Taparia Tools vs. JCIT 260 ITR 102 (Bom) referred with approval.) CIT vs. Bilahari Investments P. Ltd. [(2008) 10 RC 353]
Accounts – Rejection of books – Search – Estimate of Sales for post-search – S. 145	145	Unaccounted sales in pre-search period. AO cannot presume that such unaccounted sales would continue for post-search period. No discrepancy found in books of post-search period. The search was carried out at the assessee's premises where unaccounted sales were found. The AO did not find any defects in the books of account; but he presumed such unaccounted sales for the entire accounting period. The Learned CIT (A) and the Hon'ble ITAT also did not notice any defects in the books for the post-search period. On further appeal to the High Court, the Hon'ble High Court held that the A.O. who examined the books of account in the middle of the accounting period, cannot presume that the said discrepancies of unaccounted sales would have continued in the post-search period, particularly when there was factually no evidence/material found by the authorities below to support such a view. Therefore, the A.O. could not draw such an inference and hence the appeal of department was dismissed.

		CIT vs. Anand Kumar Deepak Kumar (2007) 294 ITR 497 (Delhi) / (2007) 160 Taxman 206 (Delhi)
Accounting - Standard 22	22	The Supreme Court held that s. 642 of the Companies Act, 1956, gives power to the Central Government to make rules in addition to the power to alter the schedules, and, therefore, the rules framed u/s. 642 adapting s. AS 22 is not ultra vires. AS 22 requires companies to make provision for deferred tax. This is a means to give effect to the concept of true and fair contemplated u/s. 211(1) and therefore, it is not inconsistent with the provisions of the Companies Act, including Schedule VI. J. K. Industries Ltd. vs. UOI & Others [2007] 213 CTR 301 (SC) / (2008) 297 ITR (SC) / (2007) 165 Taxman 323 (SC)
Accounts – Waiver of Interest – Ss. 28, 145	28 & 145	The assessee changed its accounting system from mercantile to cash system. In assessment for subsequent year AO did not allow the assessee's claim for waiver of interest, decompounding and rebate arising as a result of agreement with its customers, as there was change in system of accounting. On appeal the High Court held that there is no provision in law that creates embargo against credit of amount to which an assessee is entitled to after a change in accounting system. The change of system of accounting does not divest the assessee from receiving the benefits which have already accrued to it in previous years. CIT vs. M. P. Financial Corporation [(2007) 201 Taxation 521 (MP)]
Accrual of income – S. 5	5	The assessee entered into an agreement with another company, under which a certain amount of royalty was payable to the assessee. However, some dispute arose between the assessee and the company and the same was pending before the arbitration. On these facts, the High Court held that there was no real accrual of royalty income which was chargeable under the Act. FGP Ltd. vs. CIT (2008) 9 DTR 295 (Bom.).
Accrual of Income – S. 5	5	Where in the case of assessee, pension was first credited in assessee's account in Malaysia and then the same was remitted to him in India. The High Court held that the salary did not accrue to the assessee in India under the provisions of sections 5(1) (a) & 5(1) (c) read with article 18(3) of the DTAA between Indian and Malaysia which states as follows, "Any person paid by the Government of the contracting states to any individual may be taxed in that contracting state". As such the pension so received by the assessee was not taxable in India. CIT vs. Shri M.P. Philip [(2008) 203 Taxation 217 (Ker)].
Accrual of Income – S. 5	5	Where the assessee was following mercantile system of accounting, any waiver of interest chargeable on accrual basis on the outstanding loans after the close of the accounting year would not stop the accrual of interest on the basis of real income theory. H.P. Mineral & Industrial Corporation vs. CIT (2008) 7 DTR 345 (HP).
Acquisition of Immovable Property – S. 269UD	269UD	When there is no finding that the consideration received is allegedly less than the fair market value and the sale instances relied upon found to be not comparable, the impugned order was liable to be quashed and set aside. Gobardhandas Odhavji Dhakan & Anr. vs. Appropriate Authority (2008) 214 CTR (Bom) 114.
Additional Evidence - Commissioner (Appeals) – S. 251	251	Where assessee voluntarily files additional evidence before Commissioner (Appeals), later is obliged to allow Assessing Officer a reasonable opportunity before admitting additional evidence. Where

		assessee under directions of Commissioner (Appeals) files additional evidence before him, there is no requirement for confronting Assessing Officer, with documents /evidence entered by Commissioner (Appeals) at first appellate stage. Dy. DIT vs. Thorsesen Chartering Singapore (PTE) Ltd. (2008) 24 SOT 433 (Mum.)
Additional Evidence – S. 251	251	Rule 46A(4) provides that notwithstanding rule 46A(1), the appellate authority can permit production of documents which enables him to dispose of the appeal. In this case before CIT(A), the assessee produced confirmation letters from various creditors which request was turned down on the ground that under rule 46A(1) of the Income-tax Rules, 1962, no fresh evidence could be permitted for the first time in appeal. Later the Tribunal reversed the decision and the High Court upheld the same. CIT vs. Suretech Hospital and Research Centre Ltd. (2007) 164 Taxman 168 (Bom).
Additional Evidence – S. 4 r.w. rule 46A	4	CIT(A) was justified in admitting fresh evidence, and reversing the order of AO once CIT(A) was satisfied that assessee had a reasonable cause for not producing such evidence before AO, and further AO also did not comment on fresh evidence when matter was referred to him and opportunity given as per rule 46A(3). ACIT vs. Subhash Chander & Bros. (2007) 164 Taxman 67 (Amritsar).
Additional ground – S. 254	254	Where the revenue sought to introduce a new source of income by raising an additional ground before the Tribunal, the High Court concurring with the view taken by the Tribunal, held that if the request of revenue is acceded to, it would amount to setting the process of assessment in action by the authorities below for the first time, as the issue sought to be raised in form of additional ground was not part of subject matter of the assessment order or the order of the first appellate authority. CIT vs. Dalmia Dairy Industries Ltd. (2008) 12 DTR 25 (Del.)
Advance Tax – S. 209(1)(D)	209(1)(D)	Tax deductible at source has to be excluded from tax payable while computing advance tax as provided in section 209(1)(d), even if tax had not actually been deducted. Dy. CIT vs. Pride Former SAS (2008) 24 SOT 59 (Delhi).
Advance Tax – Ss. 209, 234B	209, 234B	Held, once the entire income received was by way of salary, and same being liable to TDS, assessee is not required to pay Advance Tax as per provisions of section 209 (1) (d), and therefore levy of Interest u/s 234B is not justified, on account of shortfall or due to non-deduction. DCIT vs. Western Geco International Ltd. (2008) 172 Taxman 41 (Delhi)
Agricultural Income – S. 10	10	The State Government Corporation whose activities were related to agricultural farms. Income from hiring of tractors and combines by the corporation were held to be agricultural income as all the activities of the assessee were connected to agricultural activities and farming. CIT vs. Haryana Land Reclamation Development Corporation Ltd. [(2007) 200 Taxation 529 (P&H)]
Agriculture Income – S. 10(1)	10(1)	Sale proceeds of plants raised in nursery on land belonging to assessee is agricultural income exempted from tax.

		CIT vs. Green Gold Tree Farmers (P) Ltd. (2007) TLR (Oct.) 609 (Utr.)
Allowability of Deduction u/s S. 80HHC and 80-IA	80HHC & 80-I	Deduction u/s. 80HHC cannot be allowed on the profits to the extent of the deduction already allowed u/s. 80-IA. Leben Laboratories Ltd. vs. Dy. CIT [294 ITR 1 (AT) (Mumbai)].
Amount – Addition – Valuation of Stock – S. 143	143	On account of quality audit undertaken during the year, dead stock was written off which resulted in lower valuation of a stock, and addition were made on account of under-valuation. Held addition not justified, as the defective sets treated as good sets in earlier year and which were being valued at inflated figures, have now been set right, and the closing stock valuation represents the actual position of saleable goods. Salora International Ltd. vs. ACIT (2008) 166 Taxman 54 (Delhi).
Amount not deductible – Leave encashment provision – S. 43B	43B	Struck down clause (f) of s. 43B as arbitrary, unconscionable and de hors the Apex Court decision in Bharat Earth Movers v. CIT (2000) 245 ITR 428/112 Taxman 61 so that leave encashment provision is held as an allowable deduction notwithstanding any payment. Exide Industries Ltd. vs. Union of India (2007) 164 Taxman 9 (Kol.)
Annual Value – S. 22	22	In addition to the letting of premises, the assessee was also responsible to provide additional facilities and amenities to its tenants. Equipments required for such additional facilities and amenities given on rent to the party to whom the task relating to provision of additional facilities and amenities was outsourced. The amount received by the said party from the tenants also considered by the AO while determining the annual value. The Tribunal held that the amount collected by the lessee from the tenants towards the amenity charges while determining the annual value was held as unjustified. Buharia Estate & Co. vs. DCIT, ITA No. 3247/Mds./2004, Bench-A, A.Y. 2001–02, dt. 7-8-2007 - BCAJ p. 28, Vol. 39-E, Part 1, October, 2007.
Annual Value - S. 23 (1)	23(1)	Property let out to Tenant and tenant sub letting the property for higher rent. Amount paid by sub lessees cannot be assessable as income of the assessee, unless there is evidence to show that the transaction was not genuine. CIT vs. Akshay Textiles Trading and Agencies P. Ltd. (2008) 304 ITR 401 (Bom.) / (2008) 214 CTR 316 (Bom) / (2008) 167 Taxman 324 (Bom) / (2008) 1 DTR 261 (Bom)
Appeal		Revenue cannot be asked to seek clearance of the High Powered Committee for the writ appeal filed by it which is pending for adjudication for fourteen (14) years. Dy. CIT vs. Rajasthan State Electricity Board (2008) 7 DTR (Raj.) 377 / (2008) 229 ITR 253 (Raj) / (2008) 171 Taxman 331 (Raj) / (2008) 217 CTR 191 (Raj).
Appeal – Additional Ground – S. 250(5)	250(5)	Where the assessee's claim for genuine expenditure in a subsequent year was rejected as the same pertained to an earlier year, additional ground with respect to the claim of the expenditure can be raised in the appeal for the earlier, if the appeal for that earlier year is pending adjudication before the CIT(A). CIT vs. Vadilal Industries Ltd. (2008) 6 DTR 98 (Guj) / (2008) 217 CTR 318 (Guj).
Appeal – Additional	250	By virtue of section 250(5), the CIT(A) is empowered to entertain any

ground before CIT(A) – S. 250		new ground raised before him which is not specified in the memorandum of appeal. Himachal Gramin Bank vs. Dy. CIT (2008) 9 DTR 141 (HP) / (2008) 305 ITR 163 (HP) / 219 CTR 670 (HP).
Appeal – Appeal not filed by department – whether binding in other cases		The Supreme Court held that the department has not preferred an appeal in one case would not operate as a bar for the Department to prefer an appeal in another case where there is just cause for doing so or it is in public interest to do so or for a pronouncement by a higher court when divergent views are expressed by the Tribunals or the High Court. C.K. Gangadharan and Another vs. CIT (2008) 304 ITR 61 (SC) / (2008) 218 CTR 1 (SC) / 172 Taxman 87 (SC) / (2008) 10 DTR 167 (SC).
Appeal – C.O.D. – S. 260A	260A	In case where the assessee is a State-owned Corporation, the appeal filed by the Income Tax Department is not maintainable if the clearance from Committee on Dispute (C.O.D.) is not obtained. CIT vs. Poompuhar Shipping Corporation (2008) 12 DTR 103 (Mad.)
Appeal – CIT (A) – Revision – Assessment – S. 143(1)(a), 246(1)(a), 264, Article 265 of the Constitution of India.	S. 143(1)(a), 246(1)(a), 264, Article 265 of the Constitution of India.	As per explanation to section 143(1), which was on the statute up to 1st June, 1999 on intimation sent to the assessee under sub-sec. (1) or sub-sec. (1B) of 143 was deemed to be an order for the purposes of section 246 and 264, and therefore, appeal against intimation relating to asst year 1995-96 was maintainable. Article 265 of the Constitution of India in unmistakable terms provides that no tax shall be levied or collected except by authority of law. Acquiescence cannot take away from a party the relief that he is entitled to where the tax is levied or collected without authority of law. In the case on hand, it was obligatory on the part of the AO to apply his mind to the facts disclosed in the return and assess the assessee keeping in mind the law holding the field. Balmukund Achrya vs. Dy. CIT (2009) 17 DTR 34 (Bom.) / www.itatonline.org
Appeal – COD Approval		The Supreme Court in Oil & Natural Gas Commission vs. Collector of Central Excise [1995] Supp 4 SCC 541 while imposing the necessity for obtaining clearance from the Committee within one month did not indicate any rigid frame. The Supreme Court held that emphasis of one month's time was to show the urgency needed and mere existence of some delay in approaching the committee does not makes the action illegal. CIT vs. Oriental Insurance Co. Ltd. (SC) (2008) 304 ITR 55.
Appeal – Condonation Of Delay Of 1045 Days - S 253(5)	253(5)	Delay of 1045 days in filing appeals against revisional order of CIT directing Assessing Officer to assess capital gains in Asst. Year 1997-98 condoned as the advice of chartered accountant not to file appeal in view of findings of CIT(A) that capital gains were chargeable to tax in asst years 1998-99 to 2000-01 constituted sufficient cause. Smt. Varanandhni Raghavan vs. ITO (2008) 15 DTR 140 (Chennai) (Trib.)
Appeal – Dismissal of an appeal by High Court by a Non Speaking Order – S. 260A	260A	The Supreme Court remanded back the matter to the High Court for fresh consideration on merits as the High Court had merely dismissed the appeal of the assessee stating that no substantial question of law arises, without passing a speaking order.

		Speed Lines (P) Ltd. vs. CIT (2008) 214 CTR 13 (SC) / (2008) 304 ITR 455 (SC) / (2008) 172 Taxman 92 (SC).
Appeal – High Court – Maintainability – Ss. 254(2), 260A	254(2) & 260A	Second appeal against same order, single appeal challenging two orders of the Tribunal is not maintainable. Further, once the High Court has dispose of the appeal filed by the appellant challenging the order of the Tribunal, appellant cannot reagitate the same issue again. Perfetti Van Melle India (P) Ltd. vs. CIT (2007) 212 CTR 173 (Del.) / (2008) 296 ITR 595 (Del) / (2007) 164 Taxman 493 (Del).
Appeal – Monetary Limit for filing Appeal – Rule 60A	260A	The Central Board of Direct Taxes Circular No. 2 of 2005, dated October 24, 2005, lays down a monetary limit for appeals to the High Court. It is applicable only prospectively and it makes no reference to pending matters. However, it clearly provides that whenever there is substantial question of law, or a question of law which is likely to recur in future, the Department is no prohibited from filing and pursuing appeals. CIT vs. Pithwa Engg. Works [2005] 276 ITR 519 (Bom) dissented from. CIT vs. Chhajer Packaging and Plastics P. Ltd. (2008) 300 ITR 180 (Bom.) Editorial Note: Circular has been printed in AIFTP Journal, July 2008 issue page No. 37.
Appeal – Power of CIT(A) – S. 251	251	CIT (A) has no power to give direction to AO to reopen the assessment of another year. CIT vs. T. A. Krishnaswamy (2008) 2 DTR 143 (Mad.)
Appeal – Powers of CIT – S. 250	250	CIT(A) is duty bound to consider the matter placed before him in its all respects and he could consider the addition under section 68 even though the Assessing Officer had only invoked section 69. Smt. Ishrawati Devi vs. ITO (2008) 114 TTJ 541 (All).
APPEAL – S. 261 - ARTICLE 136	261	Revenue having not filed any appeal in other assessment years. It is precluded from filing appeals in the relevant assessment years involving identical fact situations. CIT vs. J. K. Charitable Trust (2008) 15 DTR 41 (SC) /CIT vs. J. K. Charitable Trust (2008) 220 CTR 105 (SC)
Appeal – Tribunal – Dismissal for default – Ss. 253, 254(1), Rules 19, 20, 24	253 & 254	Appeal filed by the assessee before the Tribunal could not be dismissed as non-maintainable simply for the reason that the assessee or his representative was not present on the date when the appeal came up for consideration before the Tribunal. Tribunal could have proceeded for hearing of the appeal ex-parte as provided in Rule 24 of ITAT Rules. Tribhuwan Kumar & Ors. vs. CIT & Anr. (2007) 213 CTR 198 (Raj.) / (2007) 294 ITR 401 (Raj).
APPEAL – TRIBUNAL - DUTY		Tribunal should independently examine the issues and ground in appeal and give its independent judgment and order thereon instead of recording that the order under appeal is well reasoned order. If the Tribunal does not give its independent opinion the High Court will e deprived of a considered view which would be of immense value. CIT vs. Jadeja Consultants (P.) Ltd. (2008) 10 DTR 205 (Delhi) / (2008) 173 Taxman 286 (Delhi).
Appeal – Tribunal – Appeal fee – Revision	253(6)	In an appeal against order under section 263 filing fee will be governed

Order – S. 253(6), 263	& 263	by cl. (d) of 253 (6). Finding given in order under section 263 is not based on the computation of total income by the AO. Hence, cls. (a) (b) and (c) of section 253 (6) are not attracted. Only Rs 500 is payable as filing fee. Jet Electronics vs. ACIT (2008) 2 DTR 337 (Ahd.) Editorial Note: Order of Special Bench of Tribunal at Kolkata in Bidyut Kumar Sett vs. ITO (2004) 85 TTJ 896 (Kol)(SB) distinguished.
Appeal (Tribunal) – Decision Not Relied By The Parties Should Not Be Referred – Natural Justice		If any decision not relied upon by the parties at the time of hearing and the Bench desirous to apply the ratio of such decision, the natural justice demands that the Bench should confront the parties with such decision, and should give an opportunity to them so that they can make their submissions with reference to such decision. Vindhya Telelink Ltd. vs. Jt. CIT (2008) 15 DTR 238 (Jab.) (TM) (Trib.) Editorial Note: See Lakhmini Mewal Das vs. ITO (1972) 84 ITR 649 (Cal) (659)
Appeal (Tribunal) – Pronouncement Vis-À-Vis Passing Of Order – S. 254(1)		Pronouncement made by the tribunal immediately after hearing both the sides cannot be an order passed under section 254(1) and hence, there was no rectifiable mistake in the written order passed subsequently for the reason that it was not in conformity with the said pronouncement, however, Tribunal committed apparent mistake as the statement under section 132(4) made by the party was not considered vis-à-vis an order of the Supreme Court claimed to be cited. CIT vs. Jinendra Smelting & Rolling Mills (2008) 15 DTR 22 (Pune) (Trib.)
Appeal Cit (A) – Powers – Direction – S. 150, 251	150 & 251	Appellate authority can give finding and directions only in respect of year / period which is before that authority and no direction or finding can be given in respect of other years. While annulling block assessment for the period 1st April 1990 to 3rd Nov., 2000, CIT(A) was not justified in directing the Assessing Officer to reopen assessment for asst year 1999-2000. Smt. Metal Factory (I) (P) Ltd. vs. ACIT (2008) 15 DTR 274 (Chennai) (Trib.)
Appeal to High Court – Substantial Question of Law – S. 260A		Where the Tribunal had decided an appeal before it following its earlier decision in the case of same assessee on same issue and the revenue had not preferred appeal against the earlier order, in such case, following the rule of consistency the High Court held that the no substantial question of law arose. CIT vs. DCM Sri Ram Industries Ltd. [(2007) 201 Taxation 402 (Del)]
Appeal to Tribunal – Cross objection – S. 253(4)	S. 253(4)	Memorandum of cross objection to be considered as an appeal and has to be disposed, it cannot be held to be anfractuous and has became academic. Tata Sponge Iron Ltd. vs. CIT (2008) 307 ITR 441 (Orissa)
Appeals – Jurisdiction of Commissioner (Appeals) – After Transfer – Ss. 251,	251 & 253	The appeal had been decided by J who had been transferred. J sought to discharge his duties as Commissioner (Appeals) and decided the appeal on October 3, 2006, though on the said date, A in fact, was holding the office of the Commissioner (Appeals), Allahabad. On October 3, 2006,

253		when J passed the order in the appeal of the assessee, admittedly, he was already transferred by the order dated May 31, 2006, passed by the competent authority. On October 3, 2006, J had no jurisdiction to function as Commissioner (Appeals), Allahabad. It was held that the Tribunal was right in setting aside the order passed by him. Dr. Vinod Kumar Rai vs. Income-tax Appellate Tribunal and Others (2008) 302 ITR 148 (All.) / (2008) 4 DTR 309 (All) / (2008) 217 CTR 147 (All) / (2008) 173 Taxman 289 (All).
Appellant Tribunal - is expected to pass a speaking order		Whether Tribunal is expected to apply its mind to facts of each case and thereafter arrive at a conclusion since it is final fact-finding authority and facts determined by it would be conclusive unless they are perverse – Held, yes – whether, therefore, while disposing of an appeal, Tribunal cannot entirely rely upon order passed by subordinate authority without independent application of mind – Held, Yes. CIT vs. Jadeja Consultants (P) Ltd. (2008) 173 Taxman 286 (Delhi) / (2008) 10 DTR 205 (Delhi).
Appellate Tribunal – Jurisdiction – Single Member – S. 255	255	Single member of the Tribunal has jurisdiction to decide an appeal in case where income assessed by the AO is below Rs. 5 lakhs even though the income is enhanced in appeal by CIT(A). CIT vs. Mahakuteshwar Oil Industries (2008) 3 DTR 131 (Kar.) / (2008) 215 CTR 262 (Kar) / (2008) 298 ITR 390 (Kar) / (2008) 169 Taxman 277 (Kar).
Appellate Tribunal – Powers - Cannot Dismiss The Appeal - Has To Decide On Merits – S. 254	254	Tribunal invoking Rule 19(2) of 1963 Rules dismissed appeal solely on the ground that assessee had failed to appear before it on date fixed for hearing. The Court held that section 254 makes it incumbent on Tribunal to dispose of appeals on merit, Rule 24 of 1963 Rules as it stands, per se does not empower Tribunal to dismiss appeal for default in absence of assessee. Therefore the impugned order of Tribunal was quashed and matter remanded to the tribunal for disposal a fresh in accordance with law. Rajendra Prasad Borah vs. ITAT (2008) 174 Taxmann 568 (Guwahati)
Appellate Tribunal – Powers - New Ground by the Revenue – S. 254(1)	S. 254(1)	A new ground may be allowed to be raised only when it arises from the facts, which are on record. The revenue sought to raise additional ground before the Tribunal, which required the Tribunal to restore to the file of the Assessing Officer or the Commissioner (Appeals) the point regarding assessability of certain amount of interest. The Tribunal rejected the revenues, application on the ground that issue of taxability of the interest was not part of the subject matter of the assessment order or of the order of first appellate authority for the assessment under appeal. The High Court held that the revenue was seeking new source of income which was not there in assessment proceedings hence the Tribunal was correct in not permitting revenue to raise additional ground. Dalmia Dairy Industries Ltd vs. CIT (2009) 176 Taxman 169 (Delhi)
Appellate Tribunal – Powers – S. 254	253	The Tribunal cannot direct the assessing officer to follow an order which is not pronounced. CIT vs. Modi Revlon (P) Ltd. (2008) 174 TAXMAN 192 (Delhi)

Appellate Tribunal – Precedent – S. 255	255	It is not only a matter of judicial propriety but also a matter of judicial discipline that when one Bench of the Tribunal takes a view, another Bench on disagreement does not pass a contrary order but refer to a larger Bench for getting the matter resolved. DLF Universal Ltd. vs. CIT (2008) 306 ITR 271 (Delhi)
Appellate Tribunal - Reasoned Order And Reasonable Time - S. 254(2)	254(2)	It is incumbent upon the Tribunal to appreciate the evidence and pass a reasoned order. Tribunal having passed the order more than four months after hearing the appeal, impugned order is set a side and the appeal is restored to the Tribunal with a direction to rehear the appeal and decide the fresh by a reasoned order. The President of the Tribunal is directed to frame and lay down guidelines for expeditious delivery of judgments. Shivsagar Veg. Restaurant vs. ACIT & Anr. (2008) 16 DTR 30 (Bom.) / (2008) 220 CTR 563 (Bom.)
Appellate Tribunal – Rectification Of Mistake – S. 254(2)	254(2)	Non-consideration by the Tribunal of a Supreme Court judgment relevant to the point in issue would give rise to a mistake apparent from the record which can be rectified under section 254(2). CIT vs. V.L.S. Finance Ltd. (2008) 15 DTR 180 (Del.)
Appellate Tribunal – Right of respondent – S. 254	254	Where the issue has been considered by CIT(A), the assessee can raise the issue before the Tribunal for the first time as respondent as the issue does not involve investigation into facts. ACIT vs. M. P. Exports Comp. Ltd. (2008) 117 TTJ 417 (Indore) / (2008) 7 DTR 346 (Indore).
Appellate Tribunal – Third member has to restrict himself to the question before him		Third Member must confine himself to order of reference, he has no right to go beyond scope of reference in a matter of difference of opinion between Member of Bench and has no right to enlarge, restrict, modify and/or formulate any question of law on his own on difference of opinion referred to by Members of Tribunal. Dynavision Ltd vs. ITAT (2008) 171 Taxman 486 (Mad) / (2008) 217 CTR 13 (Mad) / (2008) 304 ITR 350 (Mad) / (2008) 171 Taxman 486 (Mad).
Appellate Tribunal – Under legal obligation to formulate the issue before it and provide reason for the conclusion		The Hon'ble High Court was not able to ascertain the issue and reason for deciding the issue involved in appeal before Appellate Tribunal in its order dated 24-8-2005. Thus, the Hon'ble Court observed that "From the order of the Tribunal, it could not be known as to what the Tribunal actually decided in the instant case. The High Court could only know the submission of parties and the decision against the revenue but not the reasons for coming to such conclusion at least in its real judicial sense. Reasons were not there because they were somewhere else and probably in the order passed by the Tribunal in earlier year's case. In such a situation, the Court could not know those reasons for examining them on merits as an appellate Courts as to whether those so-called reasons existed or not and secondly, whether they were legally sustainable or not and whether those reasons influenced the Tribunal to dismiss the appeal. If the Tribunal feels that it has already decided the issue on merits one way or other in detail by assigning reasons in some

		earlier case, then certainly, it is not required to again repeat the exercise to deciding the same issue on merits in the subsequent year. But certainly the Tribunal is under a legal obligation to formulate in short the question involved and then quote its reasoning already arrived at in its main leading order in case the Tribunal does not wish to add any more reasoning to its earlier order." CIT vs. Madhya Pradesh Tyres Co. (2008) 171 Taxman 296 (MP).
Appellate Tribunal – Adjournment – Rejection not valid – S. 254(1)	254	Tribunal was not justified in refusing prayer of assessee's counsel for 10-12 days adjournment on the ground that he being busy before the High Court, without giving any valid reason and in proceeding ex parte and deciding the appeal. Babulal Jain vs. ITO (2008) 3 DTR 232 (MP) / (2008) 215 CTR 340 (MP) / (2008) 298 ITR 369 (MP).
Appellate Tribunal– Power - Mistake apparent from the record – S. 254(2)	254(2)	The Tribunal was right in rectifying the mistake on record in not considering the decision of a co-ordinate bench of the Tribunal cited before them would constitute a mistake rectifiable u/s. 254(2). The rule of precedent was an important aspect of certainty in the rule of law, and prejudice has resulted to the assessee since the precedent has not been considered by the Tribunal. The Supreme Court further held that atonement to the wronged party by the Court or the Tribunal for the wrong committed by it has nothing to do with the concept of inherent power of review. Honda Siel Power Products Ltd vs. CIT [2007] 295 ITR 466 (SC) / (2007) 165 Taxman 307 (SC) / (2008) 213 CTR 425 (SC).
Assessee in default – Recovery of tax – Penalty – S. 221	221	No penalty can be imposed before disposing of stay applications of assessee in default. CIT vs. DLF Universal Ltd. (2008) 297 ITR 342 (Del) / (2008) 166 Taxman 14 (Del).
Assessment – Addition to Income – S. 133A, 143	133A & 143	Assessing Officer can make additions on basis of materials collected during course of illegal survey. CIT vs. Kamal & Co. (2008) 168 Taxman 246 (Raj.) / (2008) 2 DTR 382 (Raj) / (2007) 213 CTR 200 (Raj).
Assessment - Additions To Income – Statement - S. 143(3), 132(4)	143 & 132(4)	Merely on the basis admission, the assessee could not have been subjected to additions, unless and until some corroborative evidence was found in support of such admission. Further statement recorded at such odd hours (at midnight) could not be considered to be voluntary statement, it was subsequently retracted and necessary evidence was led contrary to such admission. Addition was deleted. Kailashben Mangarlal Chokshi vs. CIT (2008) 174 Taxmann 466 (Guj.) / (2008) 14 DTR 257 (Guj.) Editorial Note: Refer Circular No. F. No. 286/2/2003-IT (Inv) of CBDT dt. 10th March, 2003 (AIFTP Journal April 2003 Page No. 25)
Assessment – Adjustment – S. 143(1)(a)	143(1)(a)	The Supreme Court held that since there was conflicting decisions at the relevant time on the question whether deduction under section 80-O is allowable on gross income or net income, deduction under section 80-O claimed by the assessee on gross income cannot be reduced by way of prima facie adjustment under section 143(1)(a). Kvaerner John Brown Engg. (India) (P) Ltd. vs. ACIT (2008) 216 CTR

		193 (SC) / (2008) 6 DTR 289 (SC) / (2008) 305 UTR 103 (SC).
Assessment - Intimation – S. 143(1)(a), 143(2)	S. 143(1)(a), 143(2)	Intimation under section 143(1)(a) cannot be issued after notice was given under section 143(2) of the Income-tax Act. Tata Sponge Iron Ltd. vs. CIT (2008) 307 ITR 441 (Orissa)
Assessment – Limitation – Extension – Ss. 139(4), 144B, 153	139(4), 144B & 153	Revision of return filed u/S. 139(4) by letter being invalid, reference to IAC u/s. 144B on the basis of such revised return was also invalid, hence extended period of limitation u/s. 153, Expln. 1(iv) was not available to Revenue. Mittal Alloys & Steels vs. CIT (2007) 212 CTR 502 (P&H) / (2008) 299 ITR 291 (P&H) / (2007) 163 Taxman 234 (P&H).
Assessment – Limitation – S. 153(2A) & 153(3)(ii)	S. 153(2A) & 153(3)(ii)	Tribunal having merely upheld the order of CIT (A) for Asst years 1989-90 to 1991-92, consequential order passed by A.O. on 10th March, 2004 for Asst. Year 1989-90, which was partially set aside by CIT (A) on receipt of the order of the Tribunal is anfractuous and honest in the eyes of law and there is no question of applicability of section 153(2A) or 153(3)(ii). CIT (A) having fully set a side the assessment orders for Asst. Years 1990-91 and 1991-92 vide order dt. 10th October 1996, the A.O. had to pass the fresh assessment orders within time limit prescribed under section 153(2A) and therefore, orders of fresh assessment passed by the A.O. on 12th March, 2004 were barred by limitation. Raghava Health Care Ltd. vs. Dy. CIT (2009) 120 TTJ 124 (Visakha)
Assessment – Limitation – S. 153(2A), 153(3)(II)	153(2A) & 153(3)	When the order is set a side by the CIT(A) the AO had to pass fresh assessment orders with in the time limit prescribed under section 153(2A) Raghava Health Care Ltd. vs. Dy. CIT (2008) 14 DTR 341 (Visakha) (Trib.)
Assessment – Notice – S. 143(2)(i)	143(2)(i)	As per s. 143(2)(i), the AO's power was limited. Under the said provision, the AO can only allow or reject the claims specified in the notice and make an assessment. If he wants to go further for full scrutiny, then he has to issue notice u/s. 143(3)(ii). ITO vs. Pericles Foods Pvt. Ltd., ITA No. 4457/Mum/2004, Bench – B, A.Y. 2001-02, dt. 31-7-2007, BCAJ p. 151, Vol. 39-E, Part 2, November, 2007.
Assessment – S. 143(1)	143(1)	When initial assessment is made under section 143(1) then the notice under section 148 cannot be questioned. Sella Synergy (I) Ltd. vs. ACIT (2008) 117 TTJ 110 (Chennai) / (2008) 10 DTR 374 (Chennai).
Assessment – S.143(1)(a)	143(1)(a)	After issuance of notice u/s. 143(2) of the Act by the Assessing Officer, it is not open for him to make prima facie adjustment u/s. 143(1)(a) of the Act. Tata Sponge Iron Ltd. vs. CIT (2008) 12 DTR 130 (Ori.) / (2008) 219 CTR 187 (Ori).
Assessment – Validity – Notice – S. 143 (2), 143 (3)	143(2) & 143(3)	Notice under section 143(2) having been served in the status of individual without citing PAN, assessment on the basis of said notice on assessee HUF was without jurisdiction. Karamshibhai M. Thumar (HUF) vs. ITO (2008) 12 DTR 534 (Ahd.)

		(Trib).
Association Of Persons - Set–Off Of Loss - S 67A	67A	A Company or Co-operative Society or Society appearing in parenthesis of section 67A qualify expression "Association of Persons or Body of Individuals" and they do not relate to a member of such an AOP/BOI and therefore, share of loss from an AOP deserved to be set–off in hands of assessee against its other income computed under various heads. Mahindra Holdings & Finance Ltd vs. Dy. CIT (2008) 115 ITD 69 (Mum)(TM)
Audit — Auditing of accounts – S. 142(2A)	142(2A)	Provisions of s. 142(2A) of the I. T. Act 1961 do not give any authority to direct the preparation of fresh books of account by referring the matter to an auditor under special audit. A search took place on 20th November, 1997 and Notice u/s. 158BC was issued on 7th September 1998. The assessee submitted a Block Return on 20th October, 1998 declaring undisclosed income of Rs. 2,44,000/- for the block period. Only one day before the period for completing the Block Assessment was expiring, the AO directed the assessee to have the accounts subjected to special audit under the provisions of s. 142(2A) of the I.T. Act, 1961. Thus, the limitation for completing the Block Period was sought to be extended and the assessment order was ultimately passed on 24th May, 2000. The ITAT held that reference to Special Audit u/s. 142(2A) was not for the purpose for which the provision was enacted but merely for getting the extended period for completing assessment, which was not allowed in law. On that basis, Special Audit was held to be illegal and assessment order was held to be barred by time. On appeal to High Court, it was held that the findings given by the ITAT are findings of facts based upon the relevant material and hence no question of law arises. CIT vs. Bajrang Textiles (2007) 294 ITR 561 (Raj.) / (2006) 205 CTR 287 (Raj).
Audit – Chartered Accountants - Maharashtra Value Added Tax Act, 2002 – S. 61	61	Section 61 of Maharashtra Value Added Tax Act which requires accounts of certain dealers to be audited by Chartered Accountants is constitutionally valid and it does not infringe article 14. Sales Tax Practitioners' Association of Maharashtra vs. State of Maharashtra (2008) 170 Taxman 371 (Bom.) Editorial Note: SLP is rejected, see AIFTP Journal July' 08 issue page no. 39
Audit u/s. 44AB	44AB	A partnership concern running a hospital providing nursing home and other supportive services for which the assessee was maintaining account books and accounted for room rent, operation theatre rent and nursing charges received from patients whereas the professional fees was received directly by the doctors from the patients. On these facts it was held that the activities carried on for providing nursing home and other facilities constituted as business activities but audit under the provisions of s. 44AB was not required as the turnover from such activities were not exceeding Rs. 40 lakhs as prescribed under the said provisions. Shalini Hospitals vs. Asstt. CIT [108 ITD 534 (Hyd.)] / (2007) 110 TTJ 690 (Hyd) / (2006) 10 SOT 662 (Hyd).
Bad Debt - Business	28(1)	Amount due to the assessee share broker on account of business dealings

Loss – S. 28(1), 36(1)	& 36(1)	with the clients considered for computing income was allowable as bad debt being written off as irrecoverable. Amounts due from clients becoming irrecoverable and written off is allowable as business loss. Angel Capital & Debt Market Ltd. vs. ACIT (2008) 12 DTR 433 (Mum.) (Trib.) / (2008) 118 TTJ 351 (Mum.) **Editorial Note:-** Refer Bombay High court in CIT vs. P.R. Share & Stock Brokers P. Ltd. Income Tax Appeal No. 79 of 2008, dated 26/6/2008 (unreported) Mumbai Tribunal in India Infoline Securities (P) Ltd. vs. ACIT (2008) 25 SOT 123 (Mum.) has held that the amount written off is not allowable as bad debt, however, the same may be allowable as business loss and matter remanded to the A.O., however, the judgment of Bombay High Court has not been referred. The Tribunal may have to follow the judgment of Bombay High Court or may have to refer to Special Bench.
Bad debt – Deduction – S. 36(1)(vii)	36(1)(vii)	The assessee was engaged in the business of trading, investment, financing and bill discounting. The assessee had claimed some debts as bad. The proceedings for its recovery were pending before the courts. Held that A.O. was not justified in rejecting the claim of bad debts on the ground that it was premature for the assessee to write off the amount as bad debts. Space Financial Services vs. ACIT, ITA No. 2002/Del/2005, Bench – G, A. Y. 2000 – 01, dt. 14-9-2007 – BCAJ p. 520, Vol. 39-E, Part 5, February 2008.
Bad debt – Provision – Non Performing Assets – S. 36(1)(vii)	36(1)(vii)	Provision for non-performing assets debited to P & L a/c as per RBI directions cannot be allowed as bad debt in view of mandatory provisions of Explanation to section 36(1)(vii). T.N. Power Finance & Infrastructure Development Corporation Ltd. vs. Jt. CIT (2007) 213 CTR 610 (Mad.) / (2006) 280 ITR 491 (Mad) / (2006) 153 Taxman 466 (Mad).
Bad Debt – Provision for non-performing assets of NBFC – S. 36 (1)(vii), 45A of the RBI Act	36(1)(vii)	Amount debited to profit and loss account as a provision for NPA by an NBFC on the basis of provisioning requirement of prudential Norms by the RBI in exercise of powers conferred under section 45 JA of the RBI Act is not allowable as bad debt. New India Industries Ltd vs. ACIT (2008) 1 DTR 247 (Del) (SB).
Bad Debt – S. 36(1)(vii) & 36(2)(iii)	36(1)(vii) & 36(2)(iii)	After the amendment to S. 36(1)(vii) deduction on account of bad debt is allowable once the same is written off in the books of accounts and there is no requirement to establish that the debt had became irrecoverable. Suresh Gaggal vs. ITO (2008) 11 DTR 345 (HP)
Bad debt – Section 36(1)(viia)	36(1)(viia)	Claim of bad debts in relation to non-rural branches of the assessee bank is allowable without first setting off against the provision already allowed u/s. 36(1)(viia) when no distinction between advances relating to non-rural and rural has been made in s. 36(1)(vii). CIT vs. City Union Bank Ltd. (2007) 213 CTR 113 (Mad.) / (2007) 191 ITR 144 (Mad) / (2007) 153 Taxman 495 (Mad).
Bad Debt – Ss. 5, 36(i)(vii)	36(1)(vii)	Once the assessee has filed winding up petition against the debtor company for its inability to pay the debts and the latter has also been declared a sick company by BIFR, assessee is entitled to claim deduction

		of bad debts. CIT vs. Goyal M. G. Gases (P) Ltd. (2007) 212 CTR 305 (Del.)
Bad Debt – Ss. 5, 36(i)(vii)	36(1)(vii)	The assessee had claimed bad debt on account of export incentive which had become irrecoverable. On appeal the High Court held that the assessee had taken the amount of export incentive as part of its income in earlier year and this amount was written off by the assessee only when it become irrecoverable. In such case as the essential condition of s. 36(1)(vii) were fulfilled the assessee was eligible for deduction of the amount as bad debt. CIT vs. Excel Fashion P. Ltd. [(2007) 201 Taxation 216 (Del)]
Bad Debts – Bona write off of debt as bad has to be accepted – S. 36(1)(vii)	36(1)(vii)	No prudent businessman would write off a debt which he has a hope of recovering. Thus, where assessee has written off debt as irrecoverable in relevant previous year, it must be presumed, unless contrary was shown, to be bad debt. CIT vs. DCM [2008] 167 Taxman 160 [Delhi].
Bad Debts - Business Loss - Share Broker – S. 28(I), 36(1)(vii), 36 (2)	36(1)(vii)	Assessee a share / stock broker, claimed bad debts of certain amount representing the cost of scripts not recovered as well as brokerage not recovered. The Tribunal held that the assessee is entitled to deduction under section 36(1)(vii) only with regard to brokerage, which had been taken into account while computing total income. Since cost of scripts was never taken into account while computing income, it could not be called to be bad debt for purpose of section 36(1)(vii). However, the cost of scripts could be termed as "trading loss", which could be allowed subject to fulfillment of other conditions prescribed in that regard. G. R. Pandya Share Broking Ltd vs. ITO (2008) 26 SOT 431 (Mum.) Editorial Note.: Reference is made to Hon'ble President of ITAT to refer the matter to Special Bench, as regards to allowability of bad debts in one of the matter of a Share Broker.
Bad Debts – S. 36(1)(vii)	36(1)(vii)	From A.Y. 1989-90, if the amount is written off in the books of account by the assessee as bad debts it is enough for the assessee to claim deduction and the assessee is not required to prove that the debt has actually become bad. CIT vs. IFCI Venture Capital Funds Ltd. [(2008) 208 Taxation 329 (Del)].
Bad debts – S.36(1)(vii)	36(1)(vii)	Once the assessee has written off the debt as bad debt, requirement of section 36(1)(vii) is complied with, and the claim of deduction of bad debts is allowable. Star Chemicals (Bombay) (P) Ltd. (2008) 11 DTR 311 (Bom). Suresh Gaggal vs. ITO (2008) 11 DTR 345 (HP) CIT vs. Tusker Dye Chem – (2008) 9 DTR 298 (Del). CIT vs. Getit Information Ltd. (2008) 37 IT Rep 306 (Del).
Bad Debts – S.36(1)(vii)	36(1)(vii)	The assessee was a share broker. Payments made towards purchase price of shares on behalf of client turned bad. The same was allowable as bad debts. ACIT vs. Olympia Securities Ltd., ITA No. 4053/Mum/2002, Bench – 'G', A.Y. 1997–98, dt. 21-12-2006 – BCAJ p. 147, Vol. 40-A, Part 2, May 2008.
Bad Debts –	36(1)(v	The writing off a bad debt is a prime evidence and is sufficient

S.36(1)(vii)	ii)	requirement of law, and it is not obligatory to prove that debt w/off is indeed a bad debt, for purpose of allowance u/s. 36(1)(vii). Triveni Engg. & Industries Ltd. vs. DCIT (2007) 164 Taxman 125 (Delhi).
Bad Debts - Share Broker – S. 36(2)	S. 36(2)	In the case of share broker the loss is allowable as bad debts, though only brokerage has been credited to profit & loss account. Canon Capital & Finance Ltd. vs. ACIT ITA No. 1119/Ahd/2005 Asst. Year 2001- _____ Bench 'D' dt. 7-11-2008. Ahmedabad Chartered Accountant Association December P 583. Editorial Note:– Matter is referred to Special Bench at Mumbai.
Bad Debts – Ss. 36(i)(vii), 5	36(1)(vii)	As the accrual of income was based on condition of completion of certain work, and which on facts, could not be done due to other factors, leads to inference that income did not accrue to the assessee. Also till the time legally enforceable right comes into existence income does not accrue, and the assessee is entitled to deduction u/s 36(i)(vii) of an amount shown as income in the books. Iyshvakoo Radhu vs. ACIT (2008) 169 Taxman 38 (Delhi).
Block Assessment – Jewellery - Instruction Of Board - S. 158BD(B)	158BD (B)	In the absence of any material found during Search having nexus with undisclosed income. No addition could be made in block assessment under Chapter X1V-B hence justified in deleting addition on account of jewellery having regard to CBDT instruction no 1916 dt. 11th May 2004. CIT vs. M. S. Agarwal (HUF) (2008) 11 DTR 169 (MP)
Block Assessment – Limitation - Prohibitory Order – S. 132 (3), 158BE	158BE	Prohibitory order under section 132(3) passed on 31st October 2000, merely for continuing the search, possibility for the purpose of extending the limitation, Tribunal was justified in holding that the search stood concluded on 31st October 2000, itself and not 23rd December 2000 and therefore, the assessment order passed on 27th December 2002 was barred by limitation under section 158 BE. CIT vs. Deepak Aggrawal (2008) 14 DTR 348 (Del) / (2008) 175 Taxmann 1 (Delhi) Editorial Note: See Third Member case of Mumbai Tribunal in Nandlal M. Gandhi vs. ACIT (2008) 13 DTR 35 (Mum.) in favour of assessee. Special Bench Delhi in Smt. Krishna Verma vs. ACIT (2008) 113 ITD 655 (SB) may require reconsideration. Special bench is pending at Jodhpur in M/s. Shree Ram Lime Products Ltd., Jodhpur, Source: www.itatonline.org
Block Assessment – Limitation – S. 158BE	158BE	It could not be said that passing of prohibitory order under sub section (3) of section 132 is in all cases only to extend period of limitation for making assessments, without any facts and circumstances or evidence justifying said conclusion and in bona fide case, where there is no such attempt and prohibitory order is passed in normal course and bonafide reasons, search can not be deemed to have been concluded on day on which said order was passed. Smt. Krishna Verma vs. ACIT (2008) 113 ITD 655 (Delhi)(SB).
Block Assessment – Recording of satisfaction – S. 158BD	158BD	Assessing Officer must record his satisfaction about existence of undisclosed income before proceeding against a person other than one searched.

		New Delhi Auto Finance (P) Ltd. vs. Jt. CIT (2008) 170 Taxman 276 (Delhi) / (2008) 217 CTR 628 (Delhi) / (2008) 300 ITR 83 (Delhi) / (2008) 4 DTR 318 (Delhi).
Block Assessment - Rectification Of Mistake – Surcharge – S. 113, 154	113 & 154	When the Tribunal passed the order, the issue of levy of surcharge by retrospective application of proviso to section 113 being a debatable issue, levy of surcharge by invoking section 154 was invalid. CIT vs. Kirti Kumar Shah (2008) 12 DTR 344 (Raj.) **Editorial Note**:- After considering the Supreme Court Judgment in CIT vs. Suresh N. Gupta (2008) 297 ITR 322 (SC), also see ACIT vs. Saurashtra Kutch Stock Exchange Ltd. (2008) 12 DTR 346 (SC)
Block Assessment – S. 132A, 158BC	158BC	When books of account, other documents and assets belonging to assessee are taken in to custody by any officer or authority under any other law of land for time being in force, jurisdiction to complete block assessment in case of such an assessee under section 158BC is conferred on assessing officer only on physical handing over of all books of account / documents / assets requisitioned under section 132A. ACIT vs. Sonu Verma (2008) 115 ITD 37 (Asr.)(SB)
Block Assessment – S. 158B	158B	Jewellery received as gift which was supported by affidavits of parties, was treated as unexplained. Held, such additions made, without any examination and comments on Affidavits filed is erroneous, and additions be deleted. Mrs. Asha Devi vs. ACIT (2008) 167 Taxman 84 (Delhi).
Block Assessment – S. 158B	158B	On basis of seized material additions were made in Block Assessment to the extent of properties related to the assessee. Additions were also made in another firm based on same seized material, which was deleted by the Tribunal in that firm's case. Held, issue being identical in nature and based on finding given by Tribunal, the addition is not justified even in assessee's case. It was observed that Assessing Officer once failed to bring on record any evidence by any corroborative material, could not have a second innings by suggesting the matter to be remanded back. Sahil Builders vs. DCIT (2008) 170 Taxman 165 (Delhi).
Block Assessment — S. 158B(b)	158B(b)	Receipt of loan found recorded in a diary cannot be considered as undisclosed income as defined in S. 158B(b) Sunil Rathi Alias Jitendra Rathi vs. ACIT (2007) 112 TTJ 545 (Jd.)
Block assessment – S. 158BA r.w.s. 143(3)	158BA r.w.s. 143(3)	Income which is assessed as undisclosed income for the block period cannot be assessed in regular assessment u/s. 143 of the Act for these years even on protective basis. CIT vs. Wipro Finance Ltd. (2008) 10 DTR 281 (Karn) / (2008) 218 CTR105 (Karn).
Block assessment – S. 158BB	158BB	(ii) Once the assessee has paid advance tax and declared the income in his belated return filed after the date of search such income cannot be held as undisclosed income of the assessee. CIT vs. Smt. Shoba Ramalingam (2008) 10 DTR 233 (Mad.)
Block assessment – S. 158BB	158BB	(iii) Where the amount of alleged cash credit is shown in the regular return filed by the assessee much prior to the search and seizure action, the amount could not be added while making assessment under the

		provisions of Chapter XIV–B of the Income-tax Act, 1961. CIT vs. Tirupati Enterprises (2008) 10 DTR 17 (Raj.)
Block assessment – S. 158BB	158BB	No addition could be made in block assessment under Chapter XIV–B of the Act where no incriminating material was found by the revenue during the course of search having nexus with the undisclosed income. CIT vs. M.S. Agrawal (HUF) – (2008) 11 DTR 169 (MP). CIT vs. A. M. Mohan Babu (2008) 10 DTR 235 (Mad.)
Block Assessment – S. 158BC	158BC	Where no material relating to understatement of cost of investment or improvement was found. High Court held Dismissing the revenue's appeal held that in such case no addition could be made u/s. 158BC as undisclosed income of the assessee. CIT vs. Shri Prem Nath Nagpal [(2007) 201 Taxation 252 (Del)]
Block Assessment - S. 158BD	158BD	Proceedings under section 158BD, have to be initiated within reasonable time after completion of proceedings under section 158BC. Proceedings under section 158BD initiated beyond six years of conclusion of proceedings under section 158BC are barred by time even though there is satisfactory explanation for the delay. Saroj Nursing Home vs. ACIT (2008) 11 DTR 385 (Lucknow) (Trib).
Block Assessment – S. 158BD	158BD	For assessing the undisclosed Income of any person other than the person who is searched u/s. 132(1), it is mandatory that the Assessing Officer should be satisfied, and such satisfaction is based upon material before him, and same should be clearly identified, as the same has to be handed over to Assessing Officer of person in whose case section 158BD is sought to be invoked. ACIT vs. Hari Singh (2008) 169 Taxman 31 (Delhi).
Block Assessment – S. 158BD r.w.s. 158BC	158BD r.w.s. 158BC	(i) For initiating action, first and foremost requirement as per the provisions of section 158BD, the Assessing Officer who has to make block assessment in case of person searched, has to be satisfied that undisclosed income detected belongs to some person other than person searched. However, in other words, the section itself contemplates satisfaction is mandatory and imperative on part of Assessing Officer making assessment in case of person searched to record satisfaction before assumption of jurisdiction under section 158BD. (ii) Note of satisfaction must contain a positive finding by the A.O. who is making assessment under section 158BC which indicate therein undisclosed income found as a result of his examination of seized material and person to whom such income belongs. (iii) As envisaged in section 158BC(a)(i) a clear time of fifteen days is required to be given in the notice for furnishing return in the prescribed form otherwise the notice will be rendered invalid and, hence, assumption of jurisdiction under section 158BD by issue of such notice and all further proceedings of block assessment pursuant to such notice will be invalid and void. The time-limit as set out in the section 158BE automatically applies for invoking provisions of section 158BD. For this reason the Parliament did not find it necessary to specify a separate time-limit for same as enactment itself shows that both sections 158BC and 158BD are inter-linked, interlaced and intertwined and both form part and parcel of the same Chapter.

		Manoj Aggarwal vs. Dy. CIT [113 ITD 377 (DELHI) (SB)].
Block Assessment – S. 158BD r.w.ss. 158BC & 143	158BD r.w.ss. 158BC & 143	Block assessment order passed u/s 158BD, pursuant to Notice u/s. 143(2), which was not served within prescribed period, held to be null and void. ACIT vs. R. P. Singh (2007) 165 Taxman 147 (Delhi).
Block Assessment – S. 158BE r.w.s. 132	158BE r.w.s. 132	(i) Commencement of limitation as prescribed in Explanation 2 to section 158BE shall be only on conclusion of search. (ii) By law the date on which search gets concluded is taken according to recording made in last panchnama. (iii) It could be said that passing of a prohibitory order under sub-section (3) of section 132 is in all cases only to extend period of limitation for making assessments, without any facts and circumstances or evidence justifying said conclusion and in a bona fide case, where there is no such attempt and prohibitory order is passed in normal course and for bona fide reasons, search cannot be deemed to have been concluded on day on which said order was passed. Smt. Krishna Verma vs. Asstt. CIT [113 ITD 655 (Delhi)(SB)] / (2008) 116 TTJ 565 (Delhi)(SB) / (2008) 8 DTR 446 (Delhi)(SB).
Block Assessment – Satisfaction – S. 158BD	158BD	No satisfaction of Assessing Officer within the meaning of section 158BD being discernible from the notice, proceedings under section 158BD were invalid. Dy. CIT vs. C. S. L. Securities (P) Ltd. (2008) 15DTR 318 (Del.) (Trib.)
Block Assessment — Search & Seizure – Ss. 132, 158BC	132 & 158BC	It was held by the High Court that the statement of the assessee was recorded u/s. 132(4) of the I.T. Act, 1961 wherein it was admitted that the amount of Rs. 23,65,000 was recovered and seized belonged to him. Findings recorded by the Tribunal that the sequence of events from the stage of serving the warrant, recording the statement clearly established that the amount which was seized from the assessee could not be faulted and hence, the Block Assessment was valid in law. Appeal dismissed. Smt. Ratpaulkar vs. ACIT L/H. of I. Osan (2007) 294 ITR 273 (Bom.) / (2007) 213 CTR 288 (Bom).
Block assessment – Search and Seizure – Chapter VIA – Advance Tax – S. 158BB	158BB	While computing the undisclosed income for the block period, deduction under Chapter VIA is allowable. Amount in respect of advance tax has been paid must be taken into account. CIT vs. V. Subramaniyan (Late) (2008) 305 ITR 289 (Mad.)
Block Assessment – Time limit for completion of Block Assessment – S. 158BE	158BE	AO is bound by time-limit prescribed u/s. 158BE. In the case before the Hon'ble Tribunal was – search u/s. 132, covering the periods 1986-87 to 1996-97, was conducted on 22-1-1996 at registered office and the same was concluded on 22-4-1996. On these facts Notice u/s. 158BC was served on 22-4-1996. On the facts & circumstances the Block Assessment order u/s. 158BC was due to be completed on or before 30-4-1997 but the order was passed on 30-5-1997. Therefore, the order passed on 20-5-1997 was held to be barred by limitation. Valueline Securities (India) Ltd. vs. Astt. CIT [108 ITD 639 (Hyd.)] / (2007) 15 SOT 495 (Hyd) / 112 TTJ 804 (Hyd)..
Block Assessment – Undisclosed Income – S. 158BC r.w.s.	158BC	Search u/s. 132, covering the periods 1986-87 to 1996-97, was conducted on 22-1-1996 at registered office and the same was concluded on 22-4-1996. On these facts Notice u/s. 158BC was served on 22-4-

158B(b)		1996. Before conclusion of the search some promoters filed affidavits admitting total undisclosed income of Rs. 40 lakhs but in response to the Notice u/s. 158BC Block Return was filed disclosing NIL income. On the facts & circumstances the Assessing Officer completed the assessment at Rs. 38,64,000/- which was comprising certain amounts which were introduced in the names of some investors. The Assessing Officer treated value of such investment as benami investments in share capital and the same was added as unexplained cash credit u/s. 68 disregarding the facts that the same was recorded in account books and had been part of record furnished to the Department. On these facts and circumstances it was held that impugned addition on account of such unexplained cash credit u/s. 68 was beyond jurisdiction of Chapter XIV-B. Valueline Securities (India) Ltd. vs. Astt. CIT [108 ITD 639 (Hyd.)].
Block Assessment - Undisclosed Income - Unabsorbed Depreciation And Loss – S. 158BB, 158BA	158BD	The provisions under Chapter XIV-B do not indicate for considering a claim of set–off of brought forward losses under Chapter VI or unabsorbed depreciation under section 32(2) to be considered in the determination of undisclosed income. E. K. Lingamurthy vs. Settlement Commission (2008) 174 Taxmann 298 (Mad.)
Block Assessment – S.158BD	158BD	Initiation of proceedings u/s 158 BD without any positive material and without making necessary investigation in support of conclusion was held to be invalid. Further, held in the instant case that as material available with Assessing Officer upto the date of issuing of notice also does not justify an inference of existence of undisclosed income, it can not be held that satisfaction was based on positive material, so as to show existence of impugned undisclosed income. DCIT vs. S. Hakam Singh (2008) 173 Taxman 23 (Chandigarh)
Block assessment – Satisfaction – S. 158BD	158BD	Where no material showing that the undisclosed income of partner of a firm was found during the course of search, the High Court held that there could not be any basis for satisfaction for initiating proceedings u/s. 158BD of the Act against the partner which is mandatory requirement for initiating proceeding u/s. 158BD of the Act. Nivedita M. Makwana vs. P.M. Shukla (2008) 11 DTR 225 (Guj).
Book profit – S. 115J	115J	While computing book profit u/s. 115J of the Act, assessee is entitled to change the method of deprecation from straight line method (SLM) to written down value (WDV). The assessee is entitled to claim the extra amount of depreciation for the current year and also the arrears of past years arising due to change in method for computing depreciation. CIT vs. Rubamin P. Ltd. (2008) 10 DTR 278 (Guj.) / (2007) 218 CTR 162 (Guj).
Book Profits – Company – Provision for Doubtful Debts – S. 115JA	115JA	Provision for bad and doubtful debts being a provision made to cover up the probable diminution in the value of asset i.e. debt receivable by the assessee, it can not be said to be a provision for liability and therefore, item (c) of the explanation to section 115JA is not attracted and the provision for doubtful debts can not be added back under Cl. (c). CIT vs. HCL Comnet Systems & Services Ltd. (2008) 13 DTR 105 (SC) / (2008) 219 CTR 222 (SC) / (2008) 305 ITR 409 (SC) / 174 Taxman

		118 (Guj).
Business – Transaction in the nature of business or adventure in the nature of trade – Dividend stripping – Ss. 2(13), 28	2(13) & 28	The Supreme Court held that one of the relevant factors for determining whether the transaction was "profits and gains from business" or "adventure in the nature of trade" is whether the assessee has carried on similar transaction. In view of the aforesaid finding the matter was remanded back to the Tribunal to decide the issue afresh. Anil Jain vs. CIT [2007] 294 ITR 435 (SC), 9 RC 581 / (2007) 212 CTR 347 (SC) / (2007) 164 Taxman 319 (SC).
Business Disallowance – Actual Payment – S. 43B, 139(1)	43B	Proviso to section 43B, which came into force with effect from 1-4-1988, is retrospective. For relevant assessment year, claim of assessee on account of sales tax / CST and PF shown in books of account as payable was allowable, if payment was made before due date prescribed under section 139(1). CIT vs. Avery Cycle Inds. (P) Ltd. (2008) 170 Taxman 152 (P&H) / (2007) 292 ITR 198 (P&H)..
Business Disallowance – S. 40A(2)	40A(2)	Interest paid on borrowed funds to persons covered u/s 40 A(2)(b) at 21%, was considered as excessive, and same was allowed at 18% and balance amount of Interest was disallowed. In view of decision of Amritsar bench in case of ALM Forgings vs. ACIT [IT Appeal No. 44 (ASR) of 2005], the entire amount of Interest paid was allowed as deduction. Section 68 r.w. rule 46 A(3) – Cash Credits/ Additional Evidence. Order of Comm. (Appeals) relying on additional evidence admitted, without referring to Assessing Officer under rule 46A(3), being contrary to the provisions, and rules of natural justice, was set aside and restored back. ACIT vs. Alfa Rubber Industries (2008) 172 Taxman 32 (Amritsar).
Business expenditure – Good work reward is not bonus – Ss. 36 (1)(ii), 37(1)	36(1)(ii) & 37(1)	The good work reward given by the assessee to its employee had no relation to profit that assessee might or might not make and it had relation to only good work that was done by the employees during the course of their employment. Thus, the payment made by assessee to its employees under the nomenclature 'Good Work Reward' did not constitute bonus within the meaning of section 36(1)(ii) and was allowable as normal business expenditure u/s 37(1). Shriram Pistons & Rings Ltd. vs. CIT (2008) 171 Taxman 81 (Delhi) / (2008) 219 CTR 228 (Delhi).
Business Expenditure – Actual payment – Contribution to provident fund before the due date – S. 43, S.139(1), Ss. 2(24)(x), 36(1)(va)	43	Contributions to provident fund and Employees State Insurance beyond period stipulated in sec. 36(1)(va) read with sec. 2(24) (x) and sec. 43B but paid on or before due date for furnishing return under sec. 139(1) are deductible. CIT vs. Sabari Enterprises (2008) 298 ITR 141 (Karn.) / (2007) 213 CTR 269 (Karn).
Business Expenditure – Actual payment – Contribution towards Provident Fund – S. 43B	43B	Contributions made towards provident fund and Employees State Insurance within two to four days after the grace period provided u/s. 43B of the I.T. Act 1961 but before filing the return are entitled to the benefit provided u/s. 43B. CIT vs. Dharmendra Sharma (2008) 297 ITR 320 (Del.) / (2007) 213 CTR 609 (Del).
Business Expenditure	43B	Contribution towards PF and ESI though paid after the due date, but

– Actual payment – Provident Fund – S. 43B		before due date of filing the return are allowable as deduction. Suhag Traders (P) Ltd. vs. ITO (2008) 3 DTR 14 (Del). CIT vs. Pamwi Tissues Ltd. (2008) 3 DTR 66 (Bom.) requires reconsideration. / (2008) 215 CTR 150 (Bom). Editorial Note: CIT vs. Godaveri (Mannar) Sahakari Sarkhar Karkana Ltd. (2007) 212 CTR 384, 298 ITR (Bom.) considered.
Business Expenditure – Actual payment – Provident Fund – S. 43B	43B	Payment of contribution of employer to provident fund and pension fund before due date for filing return is allowable as deduction. Second proviso to section 43B which stipulated that the payment has to be made on or before the due date as defined in the Explanation to sec. 36((1)(va) has been omitted by the Finance Act, 2003, w.e.f. 1-4-04. This omission would have retrospective effect. Jt. CIT vs. I. T. C. Ltd. (2008) 299 ITR (AT) 341 (Kol.) (SB).
Business Expenditure – Advertisement – S. 37(1)	37(1)	Held, that expenditure on advertisement was for earning better profit and facilitating sales operation, and same cannot be said to be of enduring nature in present day scenario, and by incurring such expenses assessee had not got any fixed capital asset which justifies 1/3rd disallowance as being of capital nature. Salora International Ltd. vs. ACIT (2008) 166 Taxman 54 (Delhi).
Business expenditure – Advertisement expenses – S. 37(1)	37(1)	Advertisement expenditure incurred on products of sister concern. Assessee is sole distributor and marketing agent of products of sister concern. Amount spent wholly and exclusively for the purpose of the company's business and allowable as deduction. CIT vs. Sabena Detergents P. Ltd (2008) 303 ITR 320 (Mad.) / (2008) 214 CTR 167 (Mad) / (2007) 164 Taxman 17 (Mad).
Business Expenditure – Allowability of Finance Charges – S. 37	37	Assessee established phosphoric acid project as an extension to its present business activities and for that purpose obtained foreign currency loan from IDBI which in turn was refinanced by COFACE subject to the assessee paying finance charges to COFACE which according to the assessee was similar to payment of interest. The Department disallowed the said item on the ground that finance charges paid to COFACE on foreign currency loan was in the nature of interest and commitment charges and since the charges have been paid in relation to the project of manufacturing phosphoric acid which did not commence production during the assessment year under consideration, the expenses incurred were capital in nature. The Department also placed reliance in this connection on Explanation 8 to section 43(1) of the Income-tax Act, 1961. The Apex Court held thus: "On facts and circumstances of this case, once the Department equated the charges payable to COFACE with interest, our judgment in the case of Dy. Commr. of Income Tax, Ahmedabad vs. Core Health Care Ltd. in Civil Appeal Nos. 3952-55 of 2002 comes in. Accordingly, the said question No. (2) is also answered in favour of the assessee and against the Department." DCIT vs. Gujarat Alkalies & Chemicals Ltd. [(2008) 10 RC 374] (2008) 167 Taxman 203 (SC).
Business Expenditure – Allowance of education expenses – S. 37	37	Son of Director of company sent abroad for education, training that was availed by son has nothing to do with business of company. Expenses incurred by company was for benefit of personal gain and not for benefit

		of company. Fact that on his return the son took over management and responsibility of company immaterial. Expenditure cannot be included by way of business expenditure. M/s. Mac Explotee (P) Ltd. vs. CIT 2007 TLR 626 (Kant.)
Business Expenditure - Capital or Revenue - Development of Website – S. 37(1)	S. 37(1)	Expenses incurred for development of website to promote various business activities of assessee and for display of its information, products were allowable as revenue expenditure. Polyplex Corpn. Ltd. vs. ITO (2009) 176 Taxmann (Magz.) 56 (Delhi) Editorial Note:– Refer CIT vs. Indian Visit Com (P) Ltd (2008) 13 DTR 258 (Del.)
Business Expenditure – Central Excise payments & MODVAT credit – Allowability – S. 43B	43B	(i) Deposits made to keep a sufficient balance in the current account that is necessitated by mandate of law and not made at the option of the assessee, are to be treated as actual payment of duties for the purpose of deduction u/s. 43B as it is irretrievable. (ii) The MODVAT credit available as on the last day of the year does not amount to payment of Central Excise Duty u/s. 43B. Dy. CIT vs. Glaxo SmithKline Consumer Healthcare Ltd. (2008) 299 ITR (AT) 1 (Chandigarh) (SB).
Business Expenditure – Commitment Charges – S. 37	37	Assessee had borrowed Rs. 30 crores (approximately) from IDBI which in turn was refinanced by COFACE which foreign company had charged interest, commitment charges and insurance charges payable by the assessee. The said "commitment charges" was upfront payment. The Apex Court following its earlier decision in the case of Addl. CIT vs. Akkamamba Textiles Ltd. (227 ITR 464) and CIT vs. Sivakami Mills Ltd. (227 ITR 465) held that "commitment charges" can be allowed as deduction under section 37. JCIT vs. United Phosphorus Ltd. (2008) 10 RC 365.
Business Expenditure – Compensation only against shipping – Contingent Liability – Not allowable – S. 37		That the assessee under the earlier contract was liable to make payment of a certain amount on compensation. However, that liability stood modified by a subsequent contract between the parties, which provided that the compensation under the earlier contract would be paid and payable by reimbursement by the assessee to the foreign company only if orders were placed by that foreign company with the assessee. Further, clause 2 of the second contract contemplated reimbursement by the assessee to the foreign company at 50 cents per ounce. Thus, the liability to pay compensation was contingent upon shipping per ounce. If for any reason in future the shipping was stopped, abandoned or could not take place, the liability to pay compensation to the extent of the goods not shipped would not arise. Thus, the liability which the assessee was claiming was not a fixed liability, but was a contingent liability and, therefore, the deduction sought by the assessee was not permissible under section 37 of the Act. Mentha and Allied Products P. Ltd. vs. ACIT (2008) 302 ITR 144 (All.)
Business Expenditure – Contribution towards building fund – S. 37(1)	37(1)	The contribution made by the company towards the construction of building of the Chamber of Commerce satisfied the commercial expediency test since their activities are closely linked with the welfare of the corporate entities who are its members and whose interests are taken care of by the Chamber of Commerce.

		CIT vs. Chemicals & Plastics India Ltd. (2007) 165 Taxman 158/292 ITR 115 (Mad.)
BUSINESS Expenditure – Disallowance - Contribution To Provident Fund - S. 43B	43B	Contribution made to employees contribution to provident fund before filing of return could not be disallowed under section 43B as it stood prior to the amendment, w.e.f. 1st April 2004. Deletion of second proviso to section 43B, by Finance Act, 2003, w.e.f. 1st April 2004, being curative in nature, is impliedly retrospective in operation. CIT vs. Desh Rakshak Aushadhalaya Ltd. (2008) 10 DTR 125 (Uttarakhand) / 218 CTR 7 (Uttarkhand).
Business Expenditure - Disallowance – S. 14A	14A	Section 14A applies to all heads of income and gains at disallowing expenditure incurred in relation to income not forming part of total income even though such expenditure may be allowable under any other provision e.g. 36(1)(iii). Provisions of section 14A are applicable with respect of dividend income earned by the assessee engaged in the business of dealing in shares and securities, on the shares held as stock in trade. Provisions of Sub-S.(2) and (3) 0f section 14A are procedural in nature, hence, applicable retrospectively. ITO vs. Daga Capital Management (P.) Ltd. (2008) 15 DTR 68 (Mum.) (SB) (Trib.) / (2008) 26 SOT 603 (Mum.) (SB) / (2008) 119 TTJ 289 (Mum) (SB) / Source.: www.itatonline.org
Business Expenditure – Disallowance – S. 43B	43B	Payment made to customs authorities under protest on account of special value branch deposit with the customs authorities could not be disallowed under section 43B. CIT vs. Hughes Escorts Communications Ltd. (2008) 14 DTR 346 (Del.)
Business Expenditure – Disallowance – Constitutional validity – S. 40(a)(ia)	40(a)(ia)	Petition admitted, stay of operation of said clause (ia) is declined pending the decision on writ petition. Petitioners are directed to submit return for Asst. Year 2007-08 by taking in to account the amount for which tax has been deducted at source and to pay tax on self assessment income and the respondents are directed to accept the return. Southern Agro Engine (P) Ltd. vs. Union of India (2008) 4 DTR 253 (Mad.) / (2008) 170 Taxman 468 (Mad).
Business expenditure – Disputed liability – S. 37	37	Deduction on account of disputed liability towards purchases made by the assessee in earlier year could be allowed in the year when the supplier filed a suit for recovery of sale consideration, as the assessee was capable of estimating the loss with reasonable certainty at that time. R.C. Gupta vs. CIT (2008) 9 DTR 150 (Del.) / (2008) 166 Taxman 191 (Del) / (2008) 218 CTR 315 (Del) / (2008) 298 ITR 161 (Del).
Business Expenditure - Education Expenses Of Son Of Director – S. 37	37	Expenditure incurred on foreign education of a director who is son of director is not allowable as deduction as the process of his admission to the foreign university had started even before he was made a director and his appointment as a director was simply to ruse to claim deduction of said expenditure which is personal obligation of his father and there is no nexus between the expenditure and the business of the company. Mustang Mouldings (P.) Ltd. vs. ITO (2008) 11 DTR 577 (Mum.) (Trib.).
Business expenditure – Exchange loss – S. 37(1)	37(1)	Exchange loss incurred by the assessee on refund of advance from a foreign buyer upon the cancellation of contract was held to be a payment

		made on account of commercial expediency, accordingly the same was incurred wholly and exclusively for the purpose of business and the same was allowable as deduction. Loksons P. Ltd. vs. ACIT (2008) 11 DTR 206 (Bom).
BUSINESS Expenditure - Foreign Exchange Fluctuations – S. 28	28	Increase in revenue liability on account of foreign exchange rate fluctuation is not notional or contingent, hence allowable as deduction. CIT vs. Hughes Escorts Communications Ltd. (2008) 14 DTR 346 (Del.)
Business Expenditure - Higher Education Of Director - Not Allowable – S. 37	37	Expenses on higher education of director aged 18 years No proof that director working for assessee. No nexus, between expenditure incurred and business of assessee. Expenditure not allowable. Mustang Mouldings P. Ltd. vs. ITO (2008) 306 ITR 361 (AT) (Mum.) Editorial Note: See Mumbai Tribunal in ITO vs. Seftech India Pvt. Ltd., Bench – A, ITA No. 4407 & 6119 /Mum/2003, dt. 22th July, 2005, in favour of the assessee.
Business Expenditure – Interest on borrowed funds – S. 36(1)(iii)	36(1)(iii)	Advances, undisputedly, out of the cash credit account with the bank but the assessee claimed that these advances were made out of own funds and substantial profit for the year was disclosed. Assessing Officer, on the facts and circumstances did not make out a case that these advances were not made in the course of business for commercial expediency and for the purpose of business. In such circumstances notional interest not disallowable. Jt. CIT vs. I. T. C. Ltd. (2008) 299 ITR (AT) 341 (Kol.) (SB).
Business Expenditure – Issue of partly convertible debenture – S. 37(1)	37(1)	The expenditure incurred was on the issue of debentures, hence, the expense incurred on obtaining a loan was a revenue expenditure. CIT vs. South India (Corpn.) Agencies Ltd. (2007) 164 Taxman 249 (Mad.) / (2007) 209 CTR 233 (Mad) / (2007) 290 ITR 217 (Mad).
Business Expenditure - Keyman Insurance – S. 37(1)	S. 37(1)	Premium paid by firm in respect of insurance policy of partners under Keyman Insurance Policy is an allowable deduction under section 37(1). ITO vs. Modi Motors (2009) 27 SOT 476 (Mum.)
Business Expenditure - Mutual Fund Launch Promotion – S. 37	37	Assessee, an asset management company, managing a mutual fund having incurred mutual fund launch expenses and mutual fund promotion expenses in view of contractual obligation under the tripartite arrangement, same were allowable. First India Asset Management (P) Ltd. vs. Dy. CIT (2008) 14 DTR 402 (Chennai) (Trib.)
Business Expenditure - Non Performing Assets – S. 37	37	Provision made for non performing assets as per the directives of RBI is not allowable. Gujarat Gas Financial Services Ltd. vs. ACIT (2008) 14 DTR 481 (Ahd.)(SB) (Trib.)
Business Expenditure – Penalty – Fine – S. 37(1)	37	Payment to State Electricity Board for using excess load, amount paid by the assessee to the State Electricity Board as a kind of surcharge for drawal of excess load as per rules not being a penalty, is allowable as deduction. CIT vs. Industrial Cables (India) Ltd. (2007) 212 CTR 513 (P&H.) / (2007) 162 Taxman 423 (P&H).
Business Expenditure	S.	Penalty paid by assessee a share broker, for excess utilization limits

– Penalty – S. 37(1)	37(1)	comparable to it for doing trade of its clients at a particular time was allowable under section 37(1) of the Income-tax Act. ITO vs. VRM Share Broking (P) Ltd. (2009) 27 SOT 469 (Mum.)
Business Expenditure – Penalty or Fine – S. 37	37	Damages for breach of contract – payment made for failure to honour the contract by virtue of arbitration award – Not a liability incurred for contravention of any law – Allowable as business expenditure. Jamna Auto Industries vs. CIT (2008) 214 CTR (P&H –FB) 649 / (2008) 299 ITR 92 (P&H-FB) / (2008) 2 DTR 209 (P&H-FB) / (2008)167 Taxman 192 (P&H-FB).
Business Expenditure - Premium On Key Insurance – S. 37(1)	37(1)	Premium on Keyman Insurance Policy is allowable business expenditure in view of CBDT Circular No. 762 dt. 18th Feb., 1998. Sunita Finlease Ltd. vs. Dy. CIT (2008) 118 TTJ 263 (Bilaspur)
Business Expenditure – Premium on Redemption –S. 37	37	That the premium payable on redemption of debentures in future years was to be spread over and part of it allowed as a deduction in this year. CIT vs. Ashok Leyland Ltd. (2008) 297 ITR 107 (Mad.) / (2008) 170 Taxman 185 (Mad) / (2008) 215 CTR 187 (Mad).
Business Expenditure - Prepaid Lease Rent – S. 37	37	The assessee was not entitled to get deduction in respect of prepaid lease rent pertaining to the next financial year in the year of payment. Dy. CIT vs. FAG Bearings India Ltd. (2008) 115 ITD 53 (Ahd.)(SB) / (2008) 306 ITR 60 (AT) (Ahd.) (SB)
Business Expenditure – Products of television film – S. 37	37	Expenditure incurred on production of television film for advertising the product manufactured by the assessee is allowable as revenue expenditure. CIT vs. Liberty Group Marketing Division (2008) 8 DTR 28 (P&H) / (2008) 173 Taxman 439 (P&H).
Business Expenditure – Provident Fund (ESI) – S. 43B	43B	Provident Fund (P.F.) and Employees State Insurance (E.S.I.) contribution paid into the funds beyond the due dates prescribed in respective Acts but prior to the date of filing the return of income could not be disallowed u/s. 43B of the Act. The Hon'ble High Court noted that the reasoning given by the Apex Court while dismissing the special leave petition in the case of CIT vs. Vinay Cement Ltd. (2007) 213 CTR (SC) 268, would be binding on the High Court, as law declared by the Apex Court under Article 141 of the Constitution. CIT vs. Nexus Computer (P) Ltd. (2008) 12 DTR 77 (Mad.) / (2008) 219 CTR 54 (Mad).
Business Expenditure – Provision for warranty is not contingent liability – It is deductible expenditure – S. 37(1)	37(1)	The assessee, for the A.Y. 2001-02, claimed deduction of the sum provided in the book towards warranty expenses. The assessee provides warranty to its customers for replacement of defective parts within period of warranty. The same was disallowed on the grounds that amount did not represent an accrued liability. The Hon'ble court confirmed the views of the Appellate Tribunal that warranty liability could not be constructed to be a contingent liability. CIT vs. Hewlett Packard India (P) Ltd. (2008) 171 Taxman 13 (Delhi) / (2008) 5 DTR 220 (Delhi).
Business Expenditure – Repairs and renovation – S. 37(1)	37(1)	Assessee, an advocate, occupied a rented premises for office use. During relevant assessment year, he carried out certain repairs and renovations in office premises in order to see that said premises was kept in a proper condition and professional activities were carried out effectively and

		smoothly. Since expenditure incurred by assessee was in connection with profession / business and for smooth working thereof, leaving fixed capital untouched, expenditure in question was revenue expenditure and, hence, allowable under section 37(1). CIT vs. Dr. A. M. Singhvi (2008) 168 Taxman 136 (Raj.)
Business Expenditure – Replacement of machinery - S. 37	37	Expenditure incurred by assessee on replacement of machinery was allowable as revenue expenditure. CIT vs. Fenner (India) Ltd. (2008) 169 Taxman 62 (Mad.)
Business Expenditure – Roll over premium – S. 36(1) (iii)	36(1)(iii)	Roll over premium paid by the assessee to the bank with respect to foreign exchange forward contracts to obtain loans in foreign currency is allowable as deduction u/s. 36(1)(iii) of the Act. The High Court further held that even the provision of section 43A of the Act were not applicable as the payments made to the banks had nothing to do with the actual cost of the assets. Elecon Engineering Co. Ltd. vs. ACIT (2008) 12 DTR 179 (Guj.) / (2008) 173 Taxman 107 (Guj).
Business expenditure – S. 37	37	Assessee purchased a land and a building thereon under an agreement. The building standing on the land was scrapped and sold for Rs. 5,88,001/-. Further, there was a delay in payment and the assessee had to pay an interest of Rs. 4,00,000/. The Supreme Court held that once the department has treated the income of Rs. 5,88,001 as business income, interest expenditure on the delayed payment cannot be disallowed. Kerala Road Lines vs. CIT (2008) 299 ITR 343 (SC) / (2008) 4 DTR 305 (SC) / (2008) 215 CTR 401 (SC).
Business Expenditure – S. 37	37	Assessee stock broker, member of Delhi Stock Exchange, paid various amounts as penalty on account of late delivery, short delivery, short margin etc. to National Stock Exchange. Held, that said payments were not for infraction law, same were allowable as revenue expenditure. Arch Finance Ltd. vs. CIT (2007) 165 Taxman 189 (Delhi)
Business Expenditure – S. 37	37	Expenditure incurred for survival in the business was revenue expenditure. ACIT vs. Prabhu Spg. Mills (P) Ltd. (2008) 113 TTJ 372 (Chennai).
Business Expenditure – S. 37	37	Expenditure incurred on advertisement for recruitment of staff cannot be disallowed. Finolex Pipes (P) Ltd. vs. Dy. CIT (2008) 114 TTJ 664 (Pune).
Business Expenditure – S. 37	37	Expenditure incurred towards community development is allowable as business expenditure. Dy. CIT vs. B.S.E S. Ltd. (2008) 113 TTJ 227 (Mum.).
Business Expenditure – S. 37	37	Expenditure on repair of roads within factory premises is allowable as revenue expenditure. Finolex Pipes (P) Ltd. vs. Dy. CIT (2008) 114 TTJ 664 (Pune) / (2008) 14 TTJ 664 (Pune) / (2008) 3 DTR 353 (Pune).
Business Expenditure – S. 37	37	Expenditure on training of personal prior to setting up of plant is to be capitalized and depreciation to be allowed thereon. Gujarat Guardian Ltd. vs. Jt. CIT (2008) 114 TTJ 565 (Del.)
Business Expenditure – S. 37	37	Expenses incurred for raising funds by way of preference shares are capital expenditure. Amtek Auto Ltd. vs. Addl. CIT (2007) 112 TTJ 464 (Del.)

Business Expenditure – S. 37	37	Foreign travel expense could not be disallowed on the ground that they did not result in earning of profits immediately. ACIT vs. Amtek Auto Ltd. (2007) 112 TTJ 455 (Del.)
Business Expenditure – S. 37	37	Once the services rendered had been established, there was no basis to restrict the commission from 12.5% to 5%. Gujarat Guardian Ltd. vs. Jt. CIT (2008) 114 TTJ 565 (Del.)
Business Expenditure – S. 37	37	Payment of redemption fine in lieu of confiscation under Gold Control Act is not allowable as deduction. P. Soman vs. ITO (2007) 112 TTJ 513 (Coch.) / (2008) 111 ITD (Coch).
Business Expenditure – S. 37 (1)	37(1)	Amount spent on reconstruction of boundary wall is revenue in nature. CIT vs. Mewar Oil & General Mills Ltd. (2008) 5 DTR 40 (Raj.)
Business Expenditure – S. 37 (1)	37(1)	Expenditure on issue of debenture and collection of fixed deposit are revenue expenditure. CIT vs. Southern Petrochemical Industries Corporation Ltd. (2008) 5 DTR 70 (Mad).
Business Expenditure – S. 37 (1)	37(1)	Replacement of old worn out mono-sound system with a new stereo system in a cinema theatre which, did not result in increase in the capacity of the theatre was allowable as revenue expenditure. CIT & Anr. vs. Sagar Talkies (2008) 7 DTR 81 (Kar.) / (2008) 217 CTR 74 (Kar).
Business Expenditure – S. 37(1)	37(1)	Assessee dealing in Pharmaceutical product, was in process of setting up manufacturing facilities in respect of very same items. Held, manufacturing activity of same product be regarded as expansion of existing trading activity, and same satisfies the condition for claiming the expenses u/s. 37(1). Baxter (India) (P) Ltd. vs. DCIT (2007) 165 Taxman 190 (Delhi).
Business Expenditure – S. 37(1)	37(1)	Brokerage and commission paid to agents for obtaining houses for employees are allowable as deduction. Jt. CIT vs. ITC Ltd. (2008) 115 TTJ 45 (Kol.) (SB)
Business Expenditure – S. 37(1)	37(1)	Compensation paid for routine issues like quality of food, etc. to hotel guests is allowable business expenditure. Jt. CIT vs. ITC Ltd. (2008) 115 TTJ 45 (Kol.) (SB)
Business Expenditure – S. 37(1)	37(1)	Directors authorized to use the vehicle of the company, vehicle expenses were allowable business expenditure. Omkar Textile Mills vs. ITO (2008) 115 TTJ 716 (Ahd.)
Business Expenditure – S. 37(1)	37(1)	Expenditure incurred for advertisement in souvenir is allowable business expenditure. Jt. CIT vs. ITC Ltd. (2008) 115 TTJ 45 (Kol.) (SB)
Business Expenditure – S. 37(1)	37(1)	Expenditure incurred for research unit, existence of which is not in dispute is allowable as business expenditure.

		Jt. CIT vs. ITC Ltd. (2008) 115 TTJ 45 (Kol.) (SB)
Business Expenditure – S. 37(1)	37(1)	Expenditure incurred for shifting of machinery from one factory premises to another factory premises cannot be treated as capital in nature. Jt. CIT vs. ITC Ltd. (2008) 115 TTJ 45 (Kol.) (SB).
Business Expenditure – S. 37(1)	37(1)	Expenditure incurred for sponsorship of sport is revenue expenditure. Jt. CIT vs. ITC Ltd. (2008) 115 TTJ 45 (Kol.) (SB)
Business Expenditure – S. 37(1)	37(1)	Expenditure incurred on beautification of city is allowable revenue expenditure. Jt. CIT vs. ITC Ltd. (2008) 115 TTJ 45 (Kol.) (SB).
Business Expenditure – S. 37(1)	37(1)	Expenditure incurred on salary by a hotel could not be disallowed on the ground that the hotel was under repair and non operational during one year. Jt. CIT vs. ITC Ltd. (2008) 115 TTJ 45 (Kol.) (SB)
Business Expenditure – S. 37(1)	37(1)	Held, on facts that once the genuineness of the transactions are confirmed by payee, and it is proved that payments made were wholly and exclusively for the business, same are allowable u/s 37(1). Further, if the expenses appear to be excessive, same could only lead to an enquiry, but that, by itself, could not be ground to disallow any expenditure. Ram Manohar Singh vs. ACIT (2008) 170 Taxman 79 (Jabalpur).
Business Expenditure – S. 37(1)	37(1)	In the absence of any evidence on record that the air travel expenses were personal in nature, same are allowable as deduction. Dy. CIT vs. Gujarat NRE Coke Ltd. (2008) 115 TTJ 822 (Kol.)
Business expenditure – S. 37(1)	37(1)	Replacement cost of old manual cone winders with auto cone winders, debited as revenue expenditure under the head “Modernization & Replacement” was held to be allowable. It was observed that nature of expenditure has to be determined in an individual case depending upon surrounding circumstances, after considering developments in business and scientific field. ACIT vs. Prabhu Spinning Mills (P) Ltd. (2008) 172 Taxman 136 (Chennai).
Business Expenditure – S. 37(1)	37(1)	Sales promotion expenses incurred by assessee firm engaged in business of export of goods on account of travelling, boarding and lodging of foreign buyers who were instrumental in promoting the sales, were held to be allowable u/s 37(1). ACIT vs. Sahib Forge (2008) 168 Taxman 83 (Chandigarh).
Business Expenditure – S. 37(1)	37(1)	Sum paid as non-compete charges, restraining the recipient for a short or limited period is not a capital expenditure, as it is for increasing the profitability. It was further held that as expenditure was incurred for a period of 5 years, same cannot be allowed as lump sum in the impugned assessment year, and it has to allowed over a period of 5 years. Premier Opticals (Pvt.) Ltd. vs. ACIT (2008) 170 Taxman 167 (Mum.)

Business Expenditure - Sales tax Deferred scheme – Disallowance – S. 43	S. 43	Amount of sales tax deferred under the State Government's Deferred Scheme cannot be disallowed under section 43B. CIT vs. Jyoti Jain (2009) 17 DTR 286 (Raj.)
Business expenditure – Software – S. 37	37	Expenditure incurred on purchase of software is revenue expenditure. CIT vs. Sundaram Clayton Ltd. (2008) 10 DTR 134 (Mad.)
Business expenditure – Stamp Duty – S. 37	37	Stamp duty and registration charges incurred at the time of execution of lease agreement were allowable as revenue expenditure. CIT vs. Gopal Associates (2008) 12 DTR 20 (HP)
Business Expenditure –Disallowance – Constitutional validity – S. 40(a)(ia)	40(a)(ia)	Section 40(a)(ia), disallowing the expenditure for failure of assessee to deduct tax at source where it was required to do so is not ultra vires either on the ground of legislative incompetence or violation of any provision of constitution including fundamental rights. Dey Medial (U.P) (P) Ltd. vs. Union of India (2008) 4 DTR 235 (All).
Business Expenditure –New Business – S. 37	37	Expenses incurred for exploring the possibility of setting up a new business which did not come up allowable as revenue expenditure. CIT vs. Vardhaman Spinning and General Mills Ltd. (2008) 37 IT Rep. 300 (P&H)
Business Income - Capital Gains – investment in shares – S. 28(1), 45	S. 28(1), 45	Assessee dealing in shares both as business as well as investment and inter alias, keeping separate accounts in respect of the two portfolios, profits from sale of shares in investment portfolio after holding them for two to four years were taxable as capital gains and not as business income. Saranath Infrastructure (P) Ltd. vs. ACIT (2009) 120 TTJ 216 (Luck.)
Business Income – Capital Receipt – S. 28	28	Agreement entered into between assessee and one construction company created by assessee that assessee was not to compete with said company for certain period viz. 5 years, in consideration, said amount of compensation be treated as income of assessee and not as capital receipt. Tam Tam Pedda Guruva Reddy vs. Jt. CIT 2007 TLR 743 (Kar.)
Business Income – Income from fixed deposit – Ss. 28, 56	28 & 56	The investment of amount in fixed deposits by the assessee was only to secure a bank guarantee to be offered to M/s. KPTCL in order to acquire a contract work. It was held that it cannot be treated as an income from other sources and interest accrued on such fixed deposits has to be treated as business income only. CIT vs. Chinna Machimuthu Constructions (2008) 297 ITR 70 (Karn.) / 170 Taxman 272 (Karn).
Business Income – Interest - Partnership - S. 28(v)	28(v)	When there is no clause in partnership for payment of interest to partners regardless of profits. Right to receive interest from firms not accrued. Notional additions on account of accrued interest from partnership not sustainable. Minnnow Trading Company P. Ltd. vs. ITO (2008) 307 ITR (AT) 11 (Mum.)
Business Income – Interest – S. 28	28	Interest on FDR which was assessable under the head income from other sources and not as business income, netting of such interest against the interest paid by the assessee to the bank on bank overdraft was not allowable.

		CIT vs. M/s. Indian Handicrafts [(2007) 200 Taxation 342 (Del)]
Business Income – S. 28(1)	28(1)	Interest on Bonds earned by Investment Company was assessed as Business Income in assessment u/s. 143(3) in earlier years. During the year under consideration taxability of Interest as Business Income was denied on ground that there was no business in the year under consideration. Held, AO was not justified in holding that mere holding of Investment as Stock-in-Trade did not amount to carrying on business. J. R. Sharma Holdings (P) Ltd. vs. DCIT (2007) 165 Taxman 69 (Delhi) (SMC).
Business Income – S. 28(iv)	28(iv)	Voluntary gifts received from followers as a mark of regard and respect could not be charged to tax as benefit or perquisite under section 28(iv). Nirmala P. Athavale vs. ITO (2008) 117 TTJ 353 (Mum.)
Business Income – vis-à-vis Capital Gains – investment in shares – S. 28(1), 36(1)(iii), 45	S. 28(1), 36(1)(iii), 45	Assessee's business being investment in shares and interest on capital borrowed for purposes of said investment having been claimed and allowed as deduction under section 36(1)(iii) assessee cannot at the same time, be allowed to return said profits as capital gains by taking benefit of indexation and the said profits have to be assessed as business income. Peninsular Investments Ltd. vs. Dy. CIT (2009) 120 TTJ 96 (Hyd.) Editorial Note:- _______ M. Shah Brokers __________________
Business Income / Loss – S. 28	28	Provision for obsolete inventory can be claimed only in the year in which the items were sold and disposed of. Deepak Fertilisers & Petrochemicals Corp. Ltd. vs. DCIT (2008) 117 TTJ 752 (Mum.)
Business Income – Chargeable – S. 28(1)	28(1)	Where assessee had invested certain amount in fixed deposits to secure a bank guarantee in order to acquire a contract work, interest accrued on such fixed deposits was to be treated as its business income. CIT vs. Chinna Nachimuthu Constructions (2008) 170 Taxman 272 (Kar.) / (2008) 297 ITR 70 (Kar).
Business income – Interest income – S. 28(i)	28(i)	Where amount borrowed from bank for expansion of business was invested temporarily pending utilization of the same, interest earned on such investments by the assessee was assessable under the head, 'Business Income' and not under the head, 'Income from Other Source'. CIT & Anr. vs. Jhunjhunwala Vanaspati Ltd. (2008) 11 DTR 21 (All).
Business income or House property income – Property held as stock-in-trade – Ss. 22, 28	22 & 28	If the property is used as 'stock-in-trade', then the said property would become or partake of the character of the stock, and any income derived from the stock would be 'income' from the business, and not income from the property. In this case, the assessee was incorporated with the main object of purchase, take on lease, or acquire by sale, or let out the buildings constructed by the assessee and it had shown one of the building properties in the closing stock in the balance sheet drawn for the business. CIT vs. Neha Builders Pvt. Ltd. (2007) 164 Taxman 342 (Guj.) / 207 CTR 231 (Guj) / (2008) 296 ITR 661 (Guj)
Business Income – Revision – S. 22, 28(1), 263	22, 28(1) & 263	Taxability of income from immovable property is based upon the primary object of the assessee. If it is found to be exploiting by way of commercial activity then it must be assessed as income from business. Assessee developed a shopping mall/business centres and providing host

		of services / facilities / amenities then in that case basic intention was commercial exploitation of the immovable property and therefore, such income is to be assessed as business income. Revision is not valid. PFH Mall & Retail Management Ltd. vs. ITO (2008) 110 ITD 337 & (2008) 298 ITR (AT) (Kol.).
Business Loss – Debentures – S. 29	29	Rights allotment of non convertible debentures with detachable warrants. Difference between face value of debenture with the warrant and sale value of debenture without warrant treated as loss, which is allowable under section 29. Medicare Investments Ltd. vs. Jt. CIT (2008) 304 ITR (AT) 44 (Delhi
Business Loss - Deduction – S. 28(1)	S. 28(1)	Where assessee executed a security transactions, in violation of provisions of section 15 of Security Contacts (Regulation) Act, 1956 and loss generated out of said transaction were undisputedly, borne out of books of assessee, such a loss would be allowable loss. Bank of America vs. Dy. CIT (2009) 27 SOT 97 (Mum.)
Business Loss - Exchange Fluctuation - S. 28	28	Loss occurring on account of foreign exchange fluctuation in respect of cost of imported machinery is allowable. CIT vs. L. G. Electronics India (P) Ltd. (2008) 12 DTR 263 (Del.)
Business Loss – Foreign Exchange Loss – S. 28	28	The foreign exchange loss on account of currency translation in production sharing contract for exploration of mineral oil is not a mere book entry and is allowable as a deduction. CIT vs. Enron Oil and Gas India Ltd. (2008) 305 ITR 75 (SC) / (2008) CTR 641 (SC) / 173 Taxman 346 (SC) / 12 DTR 186 (SC).
Business Loss – loss due to fluctuation in foreign exchange rate on stock-in-trade is revenue loss – S. 28	28	Where assessee had originally taken a loan for import of capital goods, but at the time when devaluation took place loan had undergone a change of character and had assumed a new character of stock-in-trade or circulating capital, any loss suffered by assessee on account of foreign exchange rate fluctuation would have to be treated as a revenue loss and not as a capital loss. CIT vs. Goyal M. G. Gases (P) Ltd. (2008) 173 Taxman 34 (Delhi).
Business Loss - Loss From Non Recovery Of Money From Clients By Share Brokers – S. 28	28	The matter was remanded to the assessing officer to decide the allowability of loss under section 28(1). India Infoline Securities (P) Ltd. vs. ACIT (2008) 25 SOT 123 (Mum.) Cases Referred: ITO vs. GDB Share & Stock Broking Services Ltd. (2004) 3 SOT 569 (Kol.); Mahesh J. Patel vs. ACIT (2007) 109 ITD 35 (Mum.)(TM) Editorial Note: Claim as bad debt was disallowed.
Business Loss – S. 28	28	Diminution in the value of investments is an allowable business loss. CIT vs. Citi Union Bank Ltd. (2007) 213 CTR 113 (Mad.) / (2008) 291 ITR 144 (Mad).
Business Loss — S. 28(i)	28(i)	Loss on sale of non–convertible debentures was allowable as business loss. Medicare Investment Ltd. vs. Jt. CIT (2007) 112 TTJ 889 (Del.)(SB).
Business Loss – S. 37 r.w.s. 28	37 & 28	The assessee was a sole selling agent of a principal for sale of liquor. Assessee was also engaged in the business as a recovery agent. The principal modified the terms of agreement to the effect that the assessee, henceforth, will also be responsible for recovery of outstanding dues from liquor sold through his agency. Thereafter the principal debited the

		assessee's account with an amount outstanding against one of the persons to whom liquor was sold by the assessee. The assessee claimed the amount so deducted by the principal as bad debts u/s. 36(2) of the Act. AO negated the claim of the assessee. The High Court on this set of facts held that as there was a valid agreement between the parties and the assessee had agreed to share responsibility of bad debts on account of non recovery as one of the obligations in lieu of the commission earned by him. The bad debts so incurred on account of non recovery of such dues from buyer of liquor from the assessee cannot be said to be not related to the business of the assessee and the same should be allowable as bad debts/business loss. CIT vs. M/s. Amrik Singh Surendra Singh [(2007) 200 Taxation 524 (P & H)]
BUSINESS LOSS - SHARES OF SUBSIDIARY – S. 28	28	The subsidiary company had been ordered to wound up, there was no question of any party dealing in the shares of that company. The tribunal had come to the conclusion that the shares were stock in trade and therefore allowed the loss. The loss has to be treated as a trading loss. The mere fact that the shares were not sold was of no significance, since the fact the shares could not have been sold and had became worthless. The departmental appeal was dismissed. CIT vs. H.P. Mineral and Industrial Development Corporation Ltd. (2008) 305 ITR 111 (HP)
Business Loss – Shares of Subsidiary – S. 28	28	The subsidiary company had been ordered to wound up, there was no question of any party dealing in the shares of that company. The Tribunal had come to the conclusion that the shares were stock-in-trade and therefore allowed the loss. The loss has to be treated as a trading loss. The mere fact that the shares were not sold was of no significance, since the fact the shares could not have been sold and had became worthless. The departmental appeal was dismissed. CIT vs. H.P. Mineral and Industrial Development Corporation Ltd. (2008) 305 ITR 111 (HP).
Capital Expenditure – S. 37(1)	37(1)	Expenditure on providing music and CCTV in rooms of hotel is capital in nature. Jt. CIT vs. ITC Ltd. (2008) 115 TTJ 45 (Kol.) (SB).
Capital Gain - Family arrangement – Transfer – S. 45	S. 45	Surrender of shares of a company by the assessee, as a daughter of her paternal family in terms of an arbitration award to settle the disputes between two family groups was transfer in the course of family arrangement and did not result in any capital gain. Mrs. P. Sheela vs. ITO (2009) 17 DTR 415 (Bang.) (Trib.) / (2009) 308 ITR (AT) 350 (Bang.) Editorial Note:- See the judgment of Apex Court in ____________________
Capital Gain - Investment in Residential House - Borrowed Funds – S. 54F	S. 54F	In case assessee constructs or purchases a residential house out of borrowed funds, he is not eligible for deduction under section 54F. Milan Sharad Ruparel vs. ACIT (2009) 27 SOT 61 (Mum.)
Capital Gain – Investment or Stock-	45	The treatment given to a transaction in the books of account is of

in-Trade – S. 45		importance so that assessee's income from sale of shares is found to be assessable as capital gains instead of business income. In this case, the assessee had shown shares as investments in its books of account. CIT vs. Ess Jay Enterprises (P) Ltd. (2007) 165 Taxman 465 (Delhi)
Capital gain – S. 2 (47) r.w.s. 45	2(47) r.w.s. 45	Where there was no registered sale deed executed between the builder and the assessee and neither the construction work completed and nor the permission for construction granted by the local authorities, a mere grant of right to develop the land to the builder along with possession in order to facilitate the builder to develop the land under a joint collaboration arrangement did not involve transfer of capital asset as envisaged u/s. 2(47) of the Act so as to attract capital gains liability. CIT vs. Atam Prakash & Sons (2008) 12 DTR 1 (Del.) / (2008) 219 CTR 164 (Del).
Capital Gain – S. 48	48	Where the assessee entered into an agreement for purchase of a property with a condition that if the seller does not hand over the assessee vacant possession of the property on or after a particular date, the seller would have to pay liquidated damages. The liquidated damages so received by the assessee, the buyer upon seller failure to hand over the possession was held to be in the nature of a capital receipt and not a revenue receipt as held by the AO. CIT vs. Ram Nath Exports Ltd. [(2007) 201 Taxation 42 (Del)]
CAPITAL GAIN – TDR – S. 2(14), 45	2(14) & 45	Amount received by a member of the housing society from a developer holding TDR, who constructed additional floors in a building owned by the housing society. The A.O. was not justified in levying the Capital Gains Tax from the member of the housing Society. Deepak S. Shah vs. ITO. ITA NO 1483/M/2001 Bench 'D' Asst. Year 1995-96 dt. 16-6-2008 (2008) 40 BCAJ 559 (August, 2008)
Capital Gains – Acquisition – S. 45, 48, 2(14), 3	45 & 48	Cost of agricultural land which was allotted to assessee in lieu of land left in Pakistan is not incapable of being ascertained and, therefore, capital gain arising on acquisition of said land is exigible to tax. Since assessee was allotted the land before 1st March, 1970; i.e., the date from which agricultural land situated within the municipal limits is deemed to be a capital asset, cost of the land has to be determined as on 1st March, 1970 CIT vs. S. Hoshnak Singh (HUF) (2007) 212 CTR 422 (P&H). / (2007) 292 ITR 390 (P&H).
Capital Gains - Block Of Assets – Depreciation – S. 2(11), 50(2)	50(2) & 2(11)	Section 50(2), comes in to play only if assets of the same class "cease to exist" for the reason that all assets in the block are transferred during the previous year. Assessee having purchased two premises after selling its office premises in the block at the end of the year and therefore, provisions of section 50(2) are not applicable. CIT vs. Eastman Industries Ltd. (2008) 14 DTR 1 (Del.) / (2008) 219 CTR 93 (Delhi)
Capital Gains - Business Income – Income From Undisclosed Sources – S. 28(iv), 45, 48, 69	45, 48, 69 & 28(iv)	In case of transfer of shares to a group company at cost price, difference between market value of the shares and their cost price cannot be brought to tax as capital gains, there being no material to show that assessee had received more consideration than recorded in the books. Purchase of shares at a particular price which was below the market

		price as an investment was not income under section 28(iv) as it was neither benefit nor perquisite that had arisen to the assessee from the business or in the exercise of a profession. Assessee company purchasing shares at a price much lower than market price and the investment having been recorded in the books no addition could be made under section 69, there being no allegation that the apparent consideration was not the real consideration. CIT vs. Rupee Finance & Management (P) Ltd. ITA No. 1208 of 2008 dt. 20/10/2008 (Bom.) (Unreported) See Rupee Finance & Management (P.) Ltd. vs. ACIT (2008) 15 DTR 466 (Mum.) (Trib.) / (2008) 119 TTJ 643 (Mum.) / Source: www.itatonline.org
Capital Gains – Business Income – S. 45	45	Receipts from sale of land Assessee having not carried out any business for several years and treated as an Investment company by the Assessing Officer. Compensation received by the Assessee from the Government having acquired the land was assessable as Capital Gains. CIT vs. Heritage Estate Pvt. Ltd. (2007) 213 CTR 275 (Bom.) / (2008) 303 ITR 469 (Bom).
Capital Gains – Calves from cows – S. 45	45	Assessee having cows and deriving income from sale of milk. In the course of business assessee had calves from cows. The calves were sold. The receipts could not be charged to capital gains tax since there was no cost of acquisition. Dy. CIT vs. Sri Surti Singh (2008)215 CTR (MP) 326. / (2008) 299 ITR 183 (MP).
Capital Gains – Compensation received – Not liable to tax – Law before April 1, 2000 - S. 41(2), 45, 48, 50, 55(2)(1)	S. 41(2), 45, 48, 50, 55(2)(1)	The banking undertaking, inter alias, included intangible assets like goodwill, tenancy rights, man power and value of banking license. It was not possible to earmark the compensation received by the assessee item wise, therefore, it was not possible to compute the capital gains and the sum of Rs 10.20 crores was not taxable under section 45 of the Act, This was a case where the computation provisions could not apply. PNB Finance Ltd. vs. CIT (2008) 307 ITR 75 (SC)
Capital Gains - Computation – S. 112(I)	112(1)	Benefit of proviso to section 112 (1) cannot be denied to non-residents and therefore, long term capital gains arising to the applicant, a non-resident company, on the sale of equity shares of an Indian Company, being listed securities is taxable @ 10 per cent as per proviso to section 112(i). Burmah Castrol Plc., IN RE (2008) 16 DTR 145 (AAR)
Capital Gains – Cost Of Acquisition – Interest On Borrowed Capital – S. 14A & 48	14A & 48	Interest on funds borrowed for acquisition of shares is to be taken in to account towards the cost of acquisition of shares for the purpose of computation of capital gains as prescribed under section 48(ii). Capital gain on sale of shares being part of the total income of the assessee and not an exempt income, section 14A has no application. S. Balan Alias Shanmugam Balakrishna Chettiar vs. Dy. CIT (2008) 15 DTR 60 (Pune) (Trib.) Editorial Note: Judgements are contrary. Application can be made to refer larger bench.
Capital gains – cost of	S. 14A,	Interest on funds borrowed for acquisition of shares is to be taken into

acquisition – Interest on borrowed money – S. 14A, 48	48	account towards the cost of acquisition for the purpose of computation of capital gains as prescribed under section 48(11). Capital gain on sale of shares being part of the total income of the assessee and not an exempted income, section 14A has no application. S. Balan Alias Shanumugam Balkrishnan Chettiar vs. Dy. CIT (2009) 120 TTJ 397 (Pune)
Capital Gains – Cost of Acquisition – S. 45, 55(2)(b)(i)	45	(i) Section 48, 49 & 55 are machinery provisions for computing capital gains under different circumstances and therefore, they are not charging sections. (ii) Option to opt a Fair market Value [FMV] for the asset acquired prior to 1/4/1981 u/s. 55 is an independent provision for computing cost of acquisition in the given circumstances with a view to bring out such asset at the option of the assessee at it's FMV as on 1/4/1981 and therefore, this option is independent of the section 48 under the statute. Alcan Inc. vs. Dy. CIT (International Taxation) (2008) 110 ITD 15 (Mum).
Capital Gains - Cost Of Acquisition – S. 48,55(2)	45	Interest paid by assessee to the transferor shareholders of the company in addition to the acquisition price as per the directive of the SEBI for the delay in making the open offer has to be treated as part of acquisition of the shares for the purpose of computing capital gains on the sale of said shares. Burmah Castrol Plc., IN RE (2008) 16 DTR 145 (AAR)
Capital Gains – Cost of Bonus Shares – S. 55	55	The cost of bonus shares for the purpose of calculating capital gain is to be determined by spreading over the cost of old shares over the old shares and bonus shares. CIT vs. M/s. Gaja Nand Dalmia & Sons [(2007) 201 Taxation 539 (P & H)]
Capital Gains – Deductions – S. 48(2), 54E	48(2), 54E	While computing long term capital gains, deduction under section 48 (2) is required to be allowed before exemption under section 54E. Sercon (P.) Ltd. vs. ACIT (2008) 11 DTR 193 (Guj.)/ (2008) 218 CTR 479 (Guj).
Capital Gains - Dissolution Of Firm - S. 45(4)	45(4)	The assessee firm consisted of two brothers as two partners, of whom one retired and other took over the business along with all immoveable and moveable properties, liabilities, etc., subsequently, with admission of another person, a new partnership was drawn. The tribunal held there was dissolution of firm and the provisions of section 45(4) were attracted, accordingly the market value of capital asset on the date of dissolution was to be compared with the cost of acquisition or indexed cost of acquisition as the case might be and it was chargeable to tax as capital gains. ITO vs. Marketers (2008) 24 SOT 59 (Asr.) (URO)
Capital gains – Do not provide for tax on deemed profit or gain –Ss. 45 & 48	45 & 48	Assessee-company had leased out a plot of land to a company for 72 years at annual rent. It had also received a sum as deposit from lessee which was repayable in 10 yearly installment with 9 per cent interest per annum. Assessing Officer considered 9 per cent of interest at lower side and taking into consideration market rate of interest at 18 per cent, brought differential amount of interest of tax as capital gains. As sections 45 and 48 do not make any provision for any deemed profit or gain to be taxable as capital gain, mere fact that Assessing Officer was

		of view that prevalent market interest rate was 18 per cent, could not render assessee liable for being taxed on differential amount as capital gains. CIT vs. Lake Palace Hotel & Motels (2008) 171 Taxman 286 (Raj) / (2008) 219 CTR 578 (Raj) / (2008) 7 DTR 236 (Raj).
Capital Gains - Exemption – Constitutional Validity – S. 54EC	54EC	In view of amendment of section 54EC by Finance Act, 2007, retrospectively w.e.f. 1st April 2006. Incorporating the limit of Rs. 50 lakhs in long term specified assets for purposes of exemption under section 54EC and validating similar condition imposed by Notification No. 380 of 2006 dt. 22-7-2006, writ petitions filed before the amendment challenging the virus of said notification on the ground that it imposed limitation of Rs. 50 lakhs for said investment dismissed as in fractious. Arevat & D India Ltd vs. ACIT (2008) 14 DTR 247 (Mad.)
Capital Gains - Exemption – Re-Investment – S. 54F	54F	The benefit of section 54F is available for construction of a house. Where a person purchases an old building, demolishes it and construct a new building, the entire exercise could be understood as one of construction, so that relief need not be limited to the cost of the old building but the entire cost of construction. M. Vijaya Kumar vs. ITO (2008) 307 ITR (AT) 4 (Bang.)
Capital Gains – Indexation – Rate Of Tax - S. 48, 112	48	As per section 48, option is with the assessee to or not to avail of benefit of indexation for computation of capital gains on transfer of long term capital asset. If an assessee computes long term capital gains from sale of shares by availing of benefit of indexation. It has to offer same to tax at flat rate of 20 percent. If an assessee does not avail of benefit of indexation then it has to offer capital gain to tax at rate of 10 percent. Mohanlal N. Shah vs. ACIT (2008) 26 SOT 380 (Mum.)
Capital Gains - Investment in Construction of House – S. 54F	S. 54F	Assessee having invested long term capital gains with a company for purchase of a residential house under construction after canceling the earlier deal for purchase of a row house, the same was for construction of a house and not for purchase, hence, allocable limit for investment was three years and not two years. Mukesh G. Desai (HUF) vs. ITO (2009) 18 DTR 71 (Mum.)(Trib.)
Capital gains – Long-term – Short-term – S. 45	45	Assessee purchased the land in 1970 and constructed house partly in 1980. The assessee sold the land and house in the year 1982. The Court held that the gains attributable to land assessable as long-term capital gains and gains attributable to house is assessable as short-term capital gains. CIT vs. A. S. Aulakh (2008) 304 ITR 27 (P&H).
Capital gains – Mortgage debt – S. 48	48	The assessee was not entitled to the deduction on account of mortgage debt to the Bank. It was application of income and not diversion of income by overriding title. CIT vs. Sharad Sharma (2008) 305 ITR 24 (All) / (2007) 213 CTR 248 (All) / 169 Taxman 67 (All).

Capital gains – Priority of exemption claim – S. 48(2)	48(2)	While computing the Long Term Capital Gains, the deduction u/s. 48(2) has to be allowed before exemption u/s. 54E. Sercon (P.) Ltd. & Ors. vs. ACIT (2008) 218 CTR 479 (Guj.)
Capital Gains – Reference to Valuation Officer – S. 55A	55A	Once the A.O. had exercised the option to adopt cost of acquisition as on 1-4-1981 under 55(2)(b), then the substitution of the said figure, by any figure other than the value determined by valuation cell of the department is not justified. ICBI India (P) Ltd. vs. JCIT (2008) 166 Taxman 123 (Bangalore). Valuation report received subsequent to completion of assessment can be examined and adopted by appellate authority as same becomes part of record. The information obtained in said report can be utilised by Commissioner (Appeals). ICBI India (P) Ltd. vs. JCIT (2008) 166 Taxman 123 (Bangalore).
Capital Gains – S. 2(47)	2(47)	The agreement of hire purchase was entered into on 1-9-1986 and it provided for situation wherein the assessee could acquire the right of ownership over the immovable property in question, and with the condition that the consideration was to be paid by assessee in stipulated time. However assessee was allowed the possession of flat in part performance of above contract. Conveyance deed was executed on 13-1-1997; i.e., day when full and final payment was made. Property was sold on 27-1-1997. Held, that flat be treated as Long Term Capital Asset, and Income earned was Long Term Capital Gain. Smt. Sushma Rani Bansal vs. ACIT (2007) 165 Taxman 145 (Delhi).
Capital Gains – S. 54B	54B	The assessee sold agricultural land which was used by him for agricultural purpose. Out of the sale proceeds the assessee purchased another agricultural land jointly along with his only dependent son and claimed exemption u/s. 54B of the Act on reinvestment. Assessing officer denied the assessee's claim of deduction u/s. 54B as the land was purchased by the assessee jointly with his son. On these facts the High Court held that as the land was purchased for agricultural purpose, merely because in the deed for purchase of land his son was shown as co-owner the exemption u/s. 54B could not be denied to the assessee. CIT vs. Gurnam Singh (2008) 6 DTR 83 (P&H) / (2008) 218 CTR 674 (P&H).
Capital Gains – Sale of Shares – S. 45	45	Assessee not dealer in shares but mere investor. Excess amount is liable to tax as capital gains. It cannot be treated as capital receipt merely on basis of settlement containing clause that assessee should abstain from interfering with managing and running of company. After selling all the shares it was not possible for assessee to interfere with management of company. Thus, receipt by assessee was consideration for shares and liable to be taxed as capital gains. N. K. Leasing and Construction (P) Ltd. vs. CIT 2007 TLR 695 (AP)
Capital Gains – Shares – S. 45	45	Assessee company was engaged in business of financier, trading, leasing, money lending. Shares which were classified as Investments and not as stock-in-trade in Balance Sheet, was sold after holding them for about 4 to 6 years. Profit earned on sale of said shares were assessed as Capital Gains, after granting indexation benefits. Gomti Credits (P) Ltd. vs. DCIT (2007) 164 Taxman 69 (Delhi).

Capital Gains – Take over of business – S. 45(4)	45(4)	One of the two partners of the firm having relinquished his rights thereon in favour of the other by way of deed of dissolution w.e.f., 19th December, 2001, and the said partner having taken over the running business of the erstwhile firm as the sole proprietor, and later formed a new partnership with a new partner commencing from 21st December, 2001, provisions of section 45(4) are clearly applicable. ITO vs. Marketers (2008) 4 DTR 383 (Asr.)
Capital Gains – Transfer – Family Arrangement – S. 45	45	Rearrangement of shareholdings in the company to avoid possible litigation among family member is a prudent arrangement and the transfer of shares is not exigible to capital gains tax. CIT vs. Kay APP Enterprises & Ors (2008) 3 DTR 205 (Mad.)
Capital Gains – Coupons – Non-convertible debentures – Cost of acquisition – Ss. 45, 48, 55(2)(aa)(ii)(iii)(aa)	34	Coupons received along with non–convertible debentures having no cost of acquisition were not chargeable to capital gains. Assessee is entitled to adopt cost of acquisition as on 1st April, 1981, for purpose of computing capital gains even though the shares were held as stock-in-trade as on that date and were converted into capital asset on 6th November, 1987. CIT vs. Jannhavi Investments (P) Ltd. (2008) 1 DTR 374 (Bom.) / (2008) 304 ITR 276 (Bom).
Capital Gains- Reference To Valuation Officer- S . 55A.	55A	While computing long term capital gains, assessee adopted value based on the approved valuer which was higher than the fair market value as on 01-04-81 determined by the assessing officer on the basis of department valuer. The Honourable Mumbai Tribunal in Daulat Mota HUF vs. ITO, ITA No.322/M/2007, A. Y. 2003-04, Bench – D, dt 23-07-2007 has held that assessing officer assumes power under clause (a) of section 55A only when in his opinion fair market value disclosed by assessee is less. Accordingly reference held to be invalid. The Mumbai tribunal followed Ms. Rubab M Kazerani v J.C.I.T. (2004) 91 ITD 429 (Mum)(TM), Smt Krishnabai Tingre v ITO (2006) 101 ITD 317 (Pune) Appeal against the Mumbai Tribunal was dismissed by the Bombay High Court. CIT v Daulat Mota HUF ITA no 1031 of 2008 dt 22-september 2008 (Unreported.).
Capital Gains: Exemption – S. 54F	54F	Capital Gains arising on-sale of residential house and its investment in new house shall not be exempt if assessee owned another house on date of transfer. CIT vs. Ajitsingh Khajanchi (2008) 297 ITR 95 (MP.)
Capital on Revenue Receipt – Ss. 4, 28(va), 55(2)(a) & 260A	4, 28(va)	Non-compete fee – Neither taxable as revenue receipt nor as capital gains, as sec. 28(va) and sec. 55(2)(a) did not apply to the year in question; the receipt, therefore, being capital receipt was not chargeable to tax. CIT vs. Narendra D. Desai (2008) 214 CTR (Bom) 190; (2008) 1 DTR 106 (Bom) / (2008) 304 ITR 276 (Bom).
Capital or revenue – Expenditure on Software, Replacement of UPS System and Printer – Revenue Expenditure	37	The court held that the concept of enduring benefit must respond to the changing economic realities of the business. The expenses incurred by installation of software packages in the present computer world, which improves the modern communication technology, enables the assessee to carry on business operation effectively, efficiently, smoothly and

– S. 37		profitably. However, such software itself does not work on a stand alone basis. It has to be fitted to a computer system to work. Such software enhance efficiency of the operation. It is an aid in the manufacturing process rather than tool itself. Therefore the payment for such application of software, though there is an enduring benefit, does not result in acquisition of any capital asset hence has to be treated as revenue expenditure. The court also held that expenditure incurred on replacement of printer was also revenue expenditure. CIT vs. Southern Roadways Ltd. (2008) 304 ITR 84 (Mad.) / (2008) 220 CTR 298 (Mad).
Capital or revenue – Expenses on issue of debentures – Revenue Expenditure – S. 37	37	The expenses incurred for the issue of debentures are allowable deduction as revenue expenditure. CIT vs. First Leasing Co. of India Ltd. (2008) 304 ITR 67 (Mad.)
Capital or revenue – MS office software – S. 37(1)	37(1)	Expenditure incurred on MS office software which is not customized software and which software requires frequent upgradation is an allowable business expenditure whereas according to it only customized software can have an enduring value. CIT vs. G. E. Capital Services Ltd. (2007) 164 Taxman 46 (Delhi)
Capital or revenue – Replacement of machinery – Ss. 31, 37	31, 37	Expenditure on replacement of machinery revenue expenditure. CIT vs. Sambandham Spinning Mills Ltd. (2008) 298 ITR 306 (Mad.)
Capital or Revenue – Royalty – S. 37	37	Royalty payment attributable to training, support service and other technical assistance as part of agreement, payment of which was linked to the quantum of production and sales, cannot be treated as capital expenditure, and same was allowed as revenue expenses. Salora International Ltd. vs. ACIT (2008) 166 Taxman 54 (Delhi).
Capital or Revenue – S. 37	37	Expenditure incurred the advantage of which merely facilitates assessee's trading operations and in effectively carrying on business and enabling better management and better profitability, leaving the fixed capital untouched would be of revenue nature, even though the advantage may endure for indefinite future. Salora International Ltd. vs. ACIT (2008) 166 Taxman 54 (Delhi).
Capital or Revenue – Ss. 31, 37	31, 37	Expenditure on replacement of turbine rotor is revenue expenditure. CIT vs. Renu Sagar Power Co. Ltd. (2008) 298 ITR 94 (All).
Capital Or Revenue Expenditure - Access To Computer Software – S. 37	37	Assessee share broker made payment for access to certain software used by share brokers for accessing NSE for controlling trading functions. The payment was required to be made periodically, the expenditure is revenue in nature. Editorial Note:- Special Bench in Amway India Enterprises & Co. vs. Dy. CIT (2008) 114 TTJ 476 (Del.) (SB) is considered. Angel Capital & Debt Market Ltd. vs. ACIT (2008) 12 DTR 433 (Mum.) (Trib.)

Capital Or Revenue Expenditure – Debentures – S. 37	37	Expenditure incurred on issue of debentures, whether convertible or non-convertible, is allowable as revenue expenditure. CIT vs. Secure Meters Ltd. (2008) 16 DTR 53 (Raj.)
Capital Or Revenue Expenditure – Development Of Website – S. 37(1)	37(1)	Expenditure on development of website with a view to disseminate information about assesses business activities amongst its clients is revenue expenditure even though resulting in enduring benefit. CIT vs. Indian Visit Com. (P) Ltd. (2008) 13 DTR 258 (Del.)
Capital or revenue expenditure – Replacement of machine – S. 37	37	It was held that expenditure on replacement of independent complete machinery is revenue expenditure entitled to deduction u/s. 37. CIT vs. T.V.S. Sewing Needles Ltd. (2008) 302 ITR 13 (Mad.)
Capital Or Revenue Expenditure - Stamp Duty And Registration – S. 37	37	Expenditure incurred on stamp duty and registration charges at the time of execution of lease agreement for taking on lease the fruit processing plant was allowable as revenue expenditure. CIT vs. Global Associates (2008) 12 DTR 20 (HP).
Capital Or Revenue Expenditure – Website – S. 37	37	By hoisting a website, no new capital asset came in to existence as the website contains the details of the assessee company, its product, directors, etc., which in a way promotes the business activity. By incurring the expenditure, the assessee has not acquired any software though the software itself may be needed to access the website. The website requires regular updates. Therefore, the expenses incurred for development of website can not be equated with acquisition of software or treat it as capital expenditure. The expenses being incurred just to promote the business interest are allowable as revenue expenditure. Polyplex Corporation Ltd. vs. ITO (2008) 12 DTR 289 (Del.) (Trib.)
Capital or Revenue Receipt – Mesne profit and interest thereon – S. 4	4	(i) Mesne profit received under order of court on account of damages for deprivation of use and occupation of property is Capital Receipt and not taxable. (ii) Interest on such mesne profit till decree of the court held to be capital receipt and interest for the period thereafter is revenue receipt and therefore, such receipt is taxable. Narang Overseas P. Ltd. vs. ACIT (2008) 300 ITR (AT) 1 (Mum.) (SB).
Capital or Revenue Receipt – Restrictive covenant – S. 17(3)(1)	17(3)(1)	Assessee after retirement executing agreement to refrain from taking up any competitive employment /assignment in future. Receipt is capital in nature being a special compensation after cessation of employment, the said receipt cannot be taxed as profit in lieu of salary. CIT vs. Shyam Sundar Chhaparia (2008) 305 ITR 181 (MP) / (2008) 14 DTR 309 (MP).
Capital or Revenue Receipt – S. 4	4	Consideration received on sale of technical know-how lump sum consideration received in respect of sale of boilers along with technical know-how and for giving up business is a capital receipt. Lipi International vs. CIT (2007) 213 CTR 1 (Bom.) / (2008) 301 ITR 262 (Bom).
Capital Receipt - - Non Compete	4	Income - Capital Or Revenue Receipt - Non Compete Fees Assessee, after selling his business as a going concern entering into another agreement with the purchaser not to compete with purchaser in the same line of business in the specified territory consideration received for such non-compete agreement was capital receipt not chargeable to

		tax. CIT vs. Amol Narendra Dalal (2008) 13 DTR 87 (Bom.)
Capital Receipt – Restrictive covenant – S. 28	28	An assessee enters into a restrictive covenant and it does not carry out manufacture for certain period of time being a self imposed restriction and not transfer, the non-compete fee received by the assessee is not taxable. Dy. CIT vs. Max India Ltd. (2007) 112 TTJ 726 (Asr.)
Capital Receipt & Not Business Income – S. 28(i)	28(i)	Compensation received as non-compete fees, which was not in the course of its ordinary business operation, on facts of the case was treated as a capital receipt and not a revenue receipt. Gomti Credits (P) Ltd. vs. DCIT (2007) 164 Taxman 69 (Delhi).
Capital Receipt – Forfeiture application –S. 4	4	Forfeiture of application money received against partly convertible debentures is capital receipt and not chargeable to tax. Deepak Fertilisers & Petrochemicals Corp. Ltd. vs. DCIT (2008) 117 TTJ 752 (Mum.)
Capital vs. Revenue Expenditure – S. 37	37	From the decision of the Madras High Court in CIT vs. Janakiram Mills Ltd. (275 ITR 403) appeals were taken to the Supreme Court and it was contended by the assessee that replacement of assets without increasing the production capacity would amount to revenue expenditure and by the department that expenditure for replacing an old machine by a new machine constituted an advantage of an enduring nature and would be capital in nature. Without expressing any opinion on the merits the Supreme Court remanded the matters to the Commissioner (Appeals) to decide them uninfluenced by the decision of the Madras High Court. CIT vs. Ramaraju Surgical Cotton Mills 2007 (9) RC 584
Carry forward and set off of loss – S. 72A	72A	As both amalgamating and amalgamated companies are hospitals, they are not industrial undertakings" within the meaning of Sec. 72A(7)(aa). Therefore, amalgamated company is not entitled to C/F and set off unabsorbed depreciation of amalgamating company u/s 72A. Asstt. CIT vs Apollo Hospitals Enterprises Ltd. (2008) 215 CTR (Mad) 460 / (2008) 300 ITR 167 (Mad) / (2008) 4 DTR 274 (Mad).
Cash Credit – Bank pass book - S. 68	68	Additions cannot be made on account of difference in ledger balance which arises when creditor passes entry without any instructions or without any concurrence by the assessee. If in an account showing credit balance, there is no transfer of money either through cheque or cash during the year under consideration, the additions u/s 68 cannot be made. Shirish S. Maniar vs. ITO (2008) 167 Taxman 81 (Mumbai).
Cash Credit – Bank pass book - S. 68	68	Bank pass book is not as book of account maintained by assessee. Ms. Mayawati vs. Dy. CIT (2008) 113 TTJ 178 (Del.)
Cash Credit – Books of account – S. 68	68	In the present case the assessee firm had not maintained books of account. However, the firm had prepared a Profit and Loss Account. The A.O. during the assessment proceeding added the amount invested by the partners as unexplained cash credit u/s. 68 of the Act. On appeal the High Court held that as there were no books of account maintained by the assessee there could be no credit in the books of the assessee so as to attract the provisions of section 68 of the Act in the assesses case. CIT vs. Taj Borewells [(2008) 202 Taxation 413 (Mad)]

Cash credit – Burden of proof - S. 68	68	Once the assessee proves the existence of his creditors and such person owns up the credits which are found in the books of the assessee, the onus cast upon the assessee stands discharged and the assessee cannot be further asked to prove the source from which the creditors could have acquired the money deposited with the assessee. Aravali Trading Co. vs. ITO (2008) 8 DTR 199 (Raj.)
Cash Credit – Burden of proof – S. 68	68	It was held that burden of proof is confined to establish identity of creditor, its credit worthiness and genuineness of transaction and not to explain entire background. Once the assessee had discharged the burden, the extraneous material on which reliance is placed by Assessing Officer for doubting the genuineness of transactions is not relevant. Further, when there are no adverse material or tangible evidence against evidence produced by the assessee, the impugned addition can not be sustained. In the instant case share application money treated as undisclosed Income u/s 68 was deleted. Monnet Ispat & Energy Ltd. vs. DCIT (2008) 171 Taxman 27 (Delhi)
Cash Credit – Gift - S. 68	68	Genuineness of gift received from maternal uncle through cheque from NRE A/c – Held, it is not non-genuine gift when NRE A/c was found to be genuine and identity of donor was established. No addition u/s 68 is called for. CIT vs. Kulwant Industries (2008) 214 CTR (P&H) 223.
Cash Credit – Gift – S. 68	68	Gift Deeds and affidavits of NRI donors produced. In the absence of anything to justify that the alleged transactions were by way of money laundering, no addition could be made in the hands of donee for absence of blood relationship between donor and the donee. CIT vs. Padam Singh Chauhan (2008) 215 CTR (Raj) 303
Cash Credit – Gift – S. 68	68	Where the credit balance reflected in the accounts of the assessee pertained to earlier year and no fresh loans were taken during the year under consideration, provisions of section 68 were not attracted in the assessee's case. CIT vs. Usha Stud Agricultural Farms (2008) 5 DTR 335 (Del.) / (2008) 301 ITR 384 (Del).
Cash Credit – S. 68	68	Where additions are made by the Assessing Officer u/s. 68 of the Act by relying solely reliance on the statement of a third person, and the said statement was not given to the assessee nor was the assessee afforded an opportunity to cross examine the said person, on these facts, the High Court held that the addition made by the Assessing Officer is liable to be deleted on the ground that the additions were made in gross violation of principles of natural justice. Heirs & L.Rs of Late Laxmanbhai S. Patel vs. CIT (2008) 12 DTR 108 (Guj.)
Cash credit – S. 68	68	Where the assessee had received loans through account payee cheques and the creditors had confirmed the loans by making statement on oath, the High Court held that in such situation the assessee is not required to establish the capacity of the lenders to advance the money as that would amount to calling upon the assessee to establish source of the source. Labh Chand Bohra vs. ITO (2008) 8 DTR 44 (Raj.)
Cash Credit – Section	68	No addition u/s. 68 can be made in respect of investment made by

68 is not applicable to share capital		different persons in share capital of assessee–company, limited by shares, whether public or private. Jaya Securities Ltd. vs. CIT [2008] 166 Taxman 7 [All.]
Cash Credit – Share application – S. 68	68	If the assessee has given the name of the shareholders from whom they have received the share application money, then the department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as the undisclosed income of the company. CIT vs. Lovely Exports Pvt. Ltd. (2008) 216 CTR 195 (SC) / (2008) 216 CTR 195 (SC).
Cash Credit – Consideration on sale of shares cannot be added where the transaction through registered stock broker – S. 68	68	Assessing Officer held that long-term capital gain declared by assessee was false and transaction was not genuine and considered same as unexplained credit. Assessee had taken shares from market, shares were listed and transaction took place through a registered broker of stock exchange. Therefore there was no material before Assessing Officer which could have led to a conclusion that transaction was simpliciter a device to camouflage activities, to defraud revenue. CIT vs. Anupam Kapoor [2008] 166 Taxman 178 [Punj. & Har.] / (2008) 299 ITR 179 (P&H) / (2007) 212 CTR 491 (P&H).
Cash Credits – Gifts from unrelated persons / donors / friends – S. 68	68	Mere identification of donor or receipt of amount through banking channel is not sufficient to satisfy the requirement of a genuine gift. The Court emphasized on the genuineness when it found that there was no occasion for the donor to make the gift and the plea of gift for the treatment of the assessee on account of his ill health had remained unsubstantiated. Subhash Chand Verma vs. CIT (2007) 164 Taxman 401 (P&H).
Cash Credits – Gifts from unrelated persons / donors / friends – S. 68	68	Where the gifts were given to the assessee by persons who were not related to him in any manner and were not given to him for any particular reason. The taxing authorities in gift transactions must look into the surrounding circumstances to find out the real and factual position. In this case the assessee though produced documentation to show the creditworthiness of both the donors, yet offered no proper, reasonable and acceptable explanation in his defence. Rajeev Tandon vs. ACIT (2007) 164 Taxman 271 (Delhi) / (2007) 294 ITR 488 (Delhi).
Cash payment – S. 40A(3)	40A(3)	Cash payments made to one party on one day were not required to be clubbed together and treated as one cash payment and, for that reason, total cash payments exceeding Rs. 2,500 in a day to that party were not to be held as violative of s. 40A(3). In this case, the assessee made certain payments in cash to two parties on one day in small instalments. CIT vs. Bal Krishan Jagdish Chand (2007) 164 Taxman 459 (P&H) / (2008) 213 CTR 174 (P&H).
Charitable Institution – S. 10(22)	10(22)	Word ‘income’ in sub-s. (22) of s. 10 of the Act is wide enough to include deemed income under section 68 of the Act. The Court held that as the words ‘derived from’ (or some other similar words) do not occur in s. 10(22) of the Act, therefore, the word ‘income’ as occurring in s. 10(22) cannot be given restrictive meaning and must be given its natural meaning or the meaning ascribed to it in s. 2(24) of the Act. DIT (Exemption) vs. Raunaq Education Foundation (2007) 164 Taxman

		266 (Delhi).
Charitable purpose – S. 2(15)	2(15)	The assessee was constituted for the purpose of development and maintenance of minor ports in the State of Gujarat. The Supreme Court affirmed the decision of the Tribunal which held that the object of the assessee was an object of general public utility and therefore entitled to registration under section 12A. The Supreme Court held that the expression "any other object of general public utility" is of a wide connotation. The expression would prima facie include all objects which promote welfare of the general public. If the primary purpose and the predominant object are to promote the welfare of the general public the purpose would be a charitable purpose. CIT vs. Gujarat Maritime Board [2007] 295 ITR 561 (SC).
Charitable purpose Trust – Ss. 2(24), 11, 12 & 13	2(24), 11, 12 & 13	Where huge sums of money is advanced to company having substantial interest in trust and interest is charged nor adequate security is taken, neither there was a clear violation of sections 13(1) (c) and (2)(a) of the Act. Kanhayalal Punj Charitable Trust vs. CIT (2008) 297 ITR 66 (Del.)
Charitable Trust – Registration – Ss. 12AA, 12A	12AA & 12A	It was held that for grant of Registration, Commissioner is only required to satisfy himself with regard to the objects and genuineness of the activities of the trust. If nothing offensive is found, and if objects are not outside the purview of section 2(15), and in absence of any dissatisfaction, the rejection of Registration is unjustified. Dream Land Educational Trust vs. CIT (2008) 166 Taxman 27 (Amritsar).
Charitable trust – Exemption – Breach of terms of trust deed – S. 11	11	Assessing Officer denying benefit of exemption to a charitable cum religious trust on ground that trust violated terms of trust deed. It was held that breach of conditions would not disentitle assessee from getting benefits which it has been getting in previous years. CIT vs. Karimia Trust (2008) 302 ITR 57 (Jharkhand.)
Charitable Trust – S. 12A	12A	Non – consideration of application for registration of charitable trust u/s. 12A of the Act by the Income-tax authorities within the time fixed u/s. 12AA(2) of the Act would result in deemed grant of registration to the trust. The Court further, observed that the deemed registration granted to the trust may at worst cause loss of some revenue or tax payable by an assessee, on the other hand taking a contrary view and holding that not taking a decision within time fixed by section 12AA would mean leaving the assessee totally at the mercy of Income Tax authorities as the Act does not provide any remedy for such non decision. Society for Promotion of Education Adventure Sport & Conservation of Environment vs. CIT & Anr. (2008) 5 DTR 329 (All)
Charitable Trust – Registration of Charitable Trust – Ss. 11, 12A	11, 12A	The registration of trust under section 12A of the Income-tax Act, once done is a fait accompli and the Assessing Officer cannot thereafter make further probe into the objects of the Trust. ACIT vs. Surat City Gymkhana (2008) 300 ITR 214 (SC) / (2008) 216 CTR 23 (SC) / (2008) 170 Taxman 612 (SC).
Circular – Binding – S. 119	119	It is for the court to declare what the particular provision of statute says and it is not for the executive. A circular cannot be given effect to in preference to the view expressed in a decision of the Supreme Court or

		the High Court. A circular which is contrary to the statutory provisions has really no existence in law. CIT Central Excise vs. Ratan Melting & Wire Industries (2008) 14 DTR 324 (SC) / (2008) 220 CTR 98 (SC)
Claim of Deduction – S. 250, 80HHC	80HH C	Rejection of Request for admission of an additional ground of appeal to allow claim of deduction u/s 80HHC, on ground that no details were furnished with Return of Income, was held to be not justified, and held that same be admitted in interest of justice, and Assessing Officer was directed to consider the claim in accordance with law. ITO vs. World Wide Stones RIICO Indl. Area (2008) 172 Taxman 83 (Jaipur)
Collection And Recovery Of Tax – S. 222	222	Power of tax Recovery officer under Rule 11 of second schedule relate only to properties ostensibly and apparently owned by assessee in default. If property is ostensibly and apparently in the name of third party, then if income tax authorities claim that said property is actually possessed or owned by assessee in default, they shall have to establish their claim in a Civil Court. Smt. Darshana Aggareal vs. Tax Recovery Officer (2008) 173 Taxmann 90 (HP).
Company – Book Profits – Provision For Doubtful Debts – S. 115JA	115JA	Provision for bad and doubtful debts being a provision made to cover up the probable diminution in the value of asset i.e. debt receivable by the assessee, it can not be said to be a provision for liability and therefore, item (c) of the explanation to section 115JA is not attracted and the provision for doubtful debts can not be added back under Cl. (c). CIT vs. HCL Comnet Systems & Services Ltd. (2008) 13 DTR 105 (SC) / (2008) 305 ITR 409 (SC) / (2008) 219 CTR 222 (SC).
Company - Directors Liability – S. 179	S. 179	Revenue having not established that a director or directors were responsible for the conduct of the company and taken no effective steps to effect recovery of outstanding dues from the company, impugned order made under section 179 in the case of the three petitioners directors is quashed and set aside. Amit Suresh Bhatnagar vs. ITO (2009) 221 CTR 70 (Guj.)
Condonation of delay – S. 260A	260A	Delay in appeals filed by the Income Tax department before the High Court is liable to be condoned only where the delay is less than a year. Ornate Traders P. Ltd. vs. CIT (2008) 12 DTR 241 (Bom.) / (2008) 219 CTR 256 (Bom).
Co-operative Bank – Deduction – S. 80P	80P	Interest earned by the assessee, a co-operative bank on fixed deposit with another co-operative bank in compliance with the State Co-operative Societies Act was held to be income derived from banking business eligible for deduction u/s. 80 P of the Act. CIT vs. Kangra Co-operative Banks Ltd. (2008) 12 DTR 227 (HP)
Cost of Acquisition – S. 2(14)	2(14)	Agriculture land acquired before 1st Jan., 1954, agricultural land became capital asset only on amendment of s. 2(14) w.e.f. 28th Feb., 1970 and therefore, cost of acquisition of agricultural land as on 28th Feb., 1970, is to be taken for computation of capital gains and not as on 1st Jan., 1954. CIT vs. Gurcharan Singh (2007) 212 CTR 420 (P&H) / (2008) 292 IYR 387 (P&H).

Cross examination – Order passed without providing cross examination is in breach of principle of natural justice		With a view to ascertain percentage of silver used by assessee in its product, Assessing Officer sent samples of products to a research institute. On basis of report of such institute, total consumption of silver by assessee was estimated. Assessee filed objections to said report and sought permission to cross-examine analyst. However, Assessing Officer paid no heed to such request and proceeded with assessment order. Whether since correctness or otherwise of report, on basis of which assessment order was passed against assessee, was itself under challenge, said report could not be automatically accepted and Assessing Officer committed violation of principles of natural justice in not permitting cross-examination of analyst and relying upon his report to detriment of assessee. CIT vs. Dharam Pal Prem Chand Ltd. [2008] 167 Taxman 168 [Delhi] / (2007) 295 ITR (Delhi).
Current repairs – S. 31	31	The assessee was in hotel business and had incurred expenditure on repairs and replacement of worn-out equipment in its bar and conference room. Assessing Officer disallowed the expenditure on the ground that the expenses resulted in acquiring of new assets, like furniture, cots, fridge, TV stand etc. Held that Assessing Officer was not justified in disallowing the expenses on the ground that expense allowable are only those which are necessitated by the wear and tear of the relevant year, but not the accumulated repairs. DCIT vs. Southern Paper Products Pvt. Ltd., ITA No. 395/Coch./2005, Cochin Bench, A.Y. 1999 - 2000, dt. 24-9-2007 – BCAJ p. 635, Vol. 39-E, Part 6, March 2008.
Deduction – Actual payment – Interest on customs duty – S. 43B	43B	Interest on customs duty can not fall under the ambit of section 43B. Royal Cushion Vinyl Products Ltd. vs. ACIT. ITAT Mumbai Bench F, ITA No. 2824/M/2006 Asst. Year 2002-2003 dt. 31-7-2008 (2008) 40 BCAJ 25 (October 2008).
Deduction - deduction u/s. 80ib has to be reduced – S. 80HHC, 80IB	80HHC, 80IB	Nodi Exports vs. ACIT (2008) 12 DTR 1 (Del.)
Deduction – Expenditure relating to income not included in taxable income – S. 14A	14A	(i) Proviso to section 14A excludes jurisdiction of the A.O. to assess, reassess or to rectify assessments for years up to the A.Y. 2001-02. In other words, if assessments for the A.Y. 2001-02 and earlier assessment years have not been concluded and are pending before the A.O. then in that case the A.O. has to give effect to the amended provision of section 14A if any issue relating to allowability of deduction in relation to an exempted income arises before him. (ii) The proviso has to be construed strictly according to which the ambit and the operation of the main provision has curtailed jurisdiction of the A.O. and not the other authorities. It means if the intention of the legislature was so then in that case it could have been specifically provided. (iii) The A.O. is not restricted from invoking section 14A in case if the CIT(A) or the Appellate Tribunal directs him to do so. Restriction imposed by the proviso would not come in his way while carrying on the direction of the Appellate Authorities which required application of provisions of section 14A. In such case it becomes necessary and

		therefore, restriction imposed by the said proviso would not restrain him from applying the amended provisions of section 14A. (iv) The restriction imposed by the said proviso would not restrict the application of the provision of section 14A in a case where the assessment has been set aside under the provisions of section 263 for fresh adjudication. (v) The CIT(A) can invoke provisions of section 14A when matter before him is related to the A.Y. 2001-02 or earlier assessment years which are pending before him and if the subject matter is pending for consideration and which requires adjudication of applying provisions of section 14A. It is also permissible to invoke the section 14A when the facts were placed before him at that stage and if the A.O. had not invoked section 14A as the said provision was not having been in existence at the time of passing the assessment order. (vi) The Appellate Tribunal has the power to invoke the provision of section 14A where the assessment proceedings pertaining to the A.Y. 2001-02 and earlier assessment years have not been concluded or finalized and the matter is pending before the Tribunal which involves issue relating to deduction of expenses incurred in relation to the exempt income. The Tribunal has power to invoke section 14A when a ground is taken before it by any party or even suo motu irrespective of the fact that the section 14A was not invoked by any of the lower authorities. In such circumstances the Tribunal has to give full opportunity to the parties. Aquarius Travels P. Ltd. vs. ITO (2008) 301 ITR (AT) 111 (Delhi)(SB).
Deduction – Gross Total Income – S. 80HH & 80-I	80HH & 80-I	Deduction u/s. 80-I of the Act is to be computed on gross total income of the assessee without first reducing from it the amount of deduction u/s. 80HH of the Act. Dy. CIT vs. Chola Textile (P) Ltd. (2008) 10 DTR 244 (Mad.) / (2008) 304 ITR 256 (Mad) / (2008) 217 CTR 123 (Mad).
Deduction – Manufacturing – S. 80-IA	80-IA	Receipts obtained against transportation of sleepers of railway site which is incidental to the assessee's manufacturing activity. Therefore, entitled to deduction u/s 80-IA. CIT vs Arvind Construction Co. Ltd. (2008) 215 CTR (Del) 363. / (2008) 3 DTR 94 (Del).
Deduction - New Industrial Undertakings - Audit Report – S. 80IA	S. 80IA	Failure to furnish the audit report along with return disqualified the assessee for deduction under section 80IA. Deduction cannot be claimed on the ground that report cannot be claimed on the ground that report was filed during the course of assessment.
Deduction – S. 36(1)(viia)(c)	36(1)(viia)(c)	As per the plain reading of the provisions of section 36(1)(viia)(c), no condition of any specific system of accounting to be followed by the assessee had been provided. Therefore, the deduction being a statutory deduction, had to be allowed on the basis of the provisions made in the books of account, notwithstanding the fact that the assessee was following the cash system of accounting. It further noted that in the assessee's case, the debts also included the amount of loans/advances, which were not affected by the method of accounting being followed by the assessee.

		DCIT vs. Delhi Financial Corporation, ITA No. 4566/Del/2005, Bench – H, A. Y. 2002-03, dt. 7-9-2007 – BCAJ p. 396, Vol. 39-E, Part 4, January 2008.
Deduction – S. 80- IA & 80 HHC	80-IA & 80HHC	Deduction under section 80-IA is not to be deducted from profits and gains of business before computing relief under section 80HHC. SCM Creations vs. ACIT (2008) 10 DTR 247 (Mad.) / (2008) 304 ITR 319 (Mad) / (2008) 218 CTR 126 (Mad).
Deduction – S. 80HHC	80HHC	Deduction under section 80HHC is to be allowed on eligible profits after reducing therefrom deduction under section 80IB. Bansal Impex vs. CIT (2008) 115 TTJ 906 (Del.)
Deduction – S. 80HHC & 80-IA	80HHC & 80-IA	Deduction u/s. 80 IA of the Act is not to be deducted from profits and gains of the business before computing the amount of deduction u/s. 80HHC of the Act. SCM Creations vs. CIT (2008) 10 DTR 247 (Mad.), 218 CTR 126 (Mad).
Deduction – S. 80HHC & 80-IA	80HHC & 80-IA	Deduction under section 80-IA is not to be deducted from profits and gains of business before computing relief under section 80HHC. SCM Creations vs. ACIT (2008) 10 DTR 247 (Mad.) / (2008) 304 ITR 319 (Mad) / (2008) 218 CTR 126 (Mad).
Deduction – S. 80-IB r.w.s. 133A	80-IB	Assessee company claimed deduction u/s 80IB, on profits including the amount surrendered under survey u/s 133A. Held, that when the surrendered amount has not been substantiated with documentary evidence as earned from industrial undertaking deduction u/s 80 IB could not be allowed. ACIT vs. Arora Fabrics (P) Ltd. (2008) 171 Taxman 113 (Chandigarh)
Deduction – S. 80P	80P	Interest income derived from HDFC Bank was treated as income from other sources and the assessee was denied the deduction u/s. 80P(2)(a)(i) of the Act by the A.O. On appeal High Court following the decision of Apex Court in the case of Mehsana Distt. Central Co-op. Bank Ltd. vs ITO [(2001) 251 ITR 522] held that the income earned from HDFC bank was eligible for deduction u/s. 80P(2)(a)(i). CIT vs. Punjab State Co-operative Bank Ltd. [(2008) 202 Taxation 432 (P & H)].
Deduction – S. 80RR	80RR	Held, Assessee, a well-known presenter, commentator and program compeare is not covered as an 'Artist' under provision of section 80 RR. Also the term 'Artist' and 'Artiste' are distinguishable, and assessee can not be artist as appearing in section 80 RR, and hence not entitled to deduction. Harsha Achyut Bhogle vs. ITO (2008) 171 Taxman 109 (Mumbai)
Deduction – Ss. 80I, 80IA	80L & 80-IA	New units were independent undertaking, though manufacturing the existing product and they are entitled to deduction under sections 80I & 80IA. Jt. CIT vs. Associated Capsules (P) Ltd. (2008) 117 TTJ 399 (Mum.).
Deduction Actual Payment – Provident Fund – S. 43B	43B	Provident fund and ESI contribution paid belatedly but prior to filing of return could not be disallowed under section 43B. CIT vs. Nexus Computers (P) Ltd. (2008) 12 DTR 77 (Mad.) / (2008) 219 CTR 54 (Mad).
Deduction At Source - Credit For Tax	199	Credit for Tax Deducted at source if income is not assessable in relevant assessment year. Credit shall be allowed on prorata basis and on same

Deducted At Source - Cash Method Of Accounting – S. 199		proportion in which such income is offered for taxation in different assessment years. Pradeep Kumar Dhir vs. ACIT (2008) 303 ITR (AT) 45 (Chand.) (TM)
Deduction of cost of binding material – Ss. 37, 40A(2)(a)	37 & 40A(2)(a)	Assessee manufacturer of sugar purchased raw material; i.e., sugarcane from members as well as non members. Minimum price of sugarcane fixed by Central Government, sugarcane brought in bound and unbound conditions. Factories allowed to deduct 0.01 per cent from sugarcane price rebate towards binding material, Assessing Officer disallowed cost of binding material for both members as well as non members. On appeal by assessee, CIT(A) deleted the additions made by AO. Appeal filed by Revenue dismissed by I.T.A.T. In appeal the court upheld the order of Tribunal. CIT vs. Terna Shetkari Sahakari Karkhana Ltd. (2007) 109 BLR (Oct.) 2642 (Aurg.)
Deduction of tax at source – Packing material – S. 194C	194C	Packing material carrying printed work transaction essentially a sale. Purchaser not liable to deduct tax at source on price. CIT vs. Dy. Chief Accounts Officer, Marketed Khanna (2008) 304 ITR 17 (P&H).
Deduction Of Tax At Source - Payment To Stock Exchange - S. 40(A)(IA) ,194 J.		Transaction fee paid to stock exchange can not be said to be a fee paid in consideration of stock exchange rendering any technical services to the assessee. The provisions of section 194J were not attracted, therefore, there was no obligation on the part of the assessee to deduct tax at source consequently, the provisions of section 40(a)(ia) were also not attracted. Kotak Securities Ltd. vs. Addl. CIT (2008) 25 SOT 440 (Mum.)
Deduction of Tax at Source – Penalty – Ss. 194A, 201	194A & 201	Directors of the Assessee-Company took loans from the creditors in their individual capacities through Assessee-Company, repayment of the same via the Assessee-Company. Neither borrowing nor repayment nor payment of interest on the borrowing were reflected as transactions of the assessee in its books of account. AO u/s. 201(1) of the Act declared the Assessee-Company as Assessee-in-default and imposed interest for not deducting TDS at source. Assessee contended that the loan and interest were not reflected in the books of the Assessee-Company therefore it was not liable to deduct TDS at source u/s. 194A. Tribunal accepted the contention of the Assessee-Company, which was upheld by the High Court. Hence the appeal, question being whether Tribunal was right in holding that there was no obligation on the part of the Assessee-Company to comply with the statutory requirement of s. 194A. Held, there was no resolution of the Assessee-Company placed before the A.O. whereby the company agreed to act as a medium for routing the borrowings and repayments. In the circumstances it could not be said that the Assessee-Company was in charge of disbursing the repayments made by directors in their individual capacities. Consequently, Department was right in invoking the provisions of sections 201 and 201(1A) of the Act. Appeal allowed CIT vs. Century Building Industries Pvt. Ltd. (2007) 7 SCC 262.
Deduction Of Tax At Source – SALARY - S. 199, 205	199 & 205	TDS certificate was not furnished by employer. TDS could not be recovered from assessee in view of section 205 of the Income Tax Act. Capt . J. G. Joseph vs. Jt. CIT (2008) 303 ITR (AT) 395 (Mum.)

Deductions – Actual payment – Provident Fund – S. 43B	43B	The Supreme Court held that the contribution made to the provident fund before filing of the return could not be disallowed under 43B as it stood prior to the amendment w.e.f. April 1, 2004. CIT vs. Vinay Cements Ltd. [2007] 213 CTR 268 (SC).
Deemed Dividend – Loan To A Company – S. 2(22)(E)	2(22)(e)	For purposes of section 2(22)(e), it is not necessary that payer or payee must have shareholdings in other company, if payment of any sum by way of advance or loan is made by one private Limited company to another private limited company in which there is a common shareholder having sufficient holding or beneficial interest in both companies, provisions of section 2(22)(e) can be invoked and those loans and advances shall be deemed dividend under section 2 (22)(e). Skyline India Recruit.com (P) Ltd. vs. ITO (2008) 24 SOT 402 (Mum.) (SMC)
Deemed dividend – S. 2(22)(e)	2(22)(e)	Amount of loan advanced by the company to partners of a firm, which is not a shareholder in company, cannot be assessed as deemed dividend in the hands of the firm, even though all the partners of the firm are shareholders of the company. CIT vs. Hotel Hilltop (2008) 5 DTR 46 (Raj.)
Deemed Dividend – S. 2(22)(e)	2(22)(e)	Assessee became a registered share holder of the lender company much after receiving the loan, hence, the loan amount can not be treated as deemed dividend. ITO vs. Sagar Sahil Investmnt (P) Ltd. (2008) 13 DTR 350 (Mum.) (Trib.)
Deemed Dividend – S. 2(22)(e)	2(22)(e)	Individual and HUF are two different entities, and their shareholding cannot be clubbed for applying provisions of s. 2(22)(e). JCIT vs. Kunal Organics (P) Ltd. (2007) 164 Taxman 169 (Ahmedabad).
Deemed dividend – S. 2(22)(e)	2(22)(e)	Normal business transactions entered into between two entities cannot be termed as deemed dividend u/s. 2(22)(e) of the Act because of the share holding pattern of the two companies. CIT vs. Ambassador Travels P. Ltd. [(2008) 8 DTR (Del) 108 / (2008) 173 Taxman 407 (Del).
Deemed income – Stock Valuation – S. 4	4	There was difference between stock value shown in accounts and value disclosed to Bank. Inflated stock submitted to avail of higher credit facility from Bank. Neither Bank nor the Assessing officer physically verifying and certifying the stock. Additions deleted. CIT vs. Das Industries (2008) 303 ITR 199 (All) / (2008) 199 CTR 370 (All).
Delay in Filing Appeal – S. 253	253	Delay in filing of appeal caused due to mistake on part of counsel in giving wrong opinion, constituted a reasonable cause for delay. Pushpa Gujral Science City Society vs. CIT (2007) 165 Taxman 67 (Amritsar).
Demerger – S. 2 (19AA), 47(vi)(b)	2(19AA)	All the conditions have to be satisfied in section 2 (19AA) have to be satisfied in a case to be called a demerger for the purposes of section 47(vi)(b). In the present assessee no shares have been issued by resulting company and there being no consideration of section 2 (19AA) were satisfied and benefit of section 47(vi)(b) was not available. Avaya Global Connect Ltd vs. ACIT (2008) 13 DTR 309 (Mum.) (Trib.)
Demerger – Unabsorbed	72(A)(7)	Unabsorbed portion of capital expenditure and unabsorbed depreciation on scientific research in the hands of demerged company can not form

Depreciation And Unabsorbed Capital Expenditure On Scientific Research – S. 72(A)(7)		part of either "accumulated loss" or "unabsorbed depreciation" in the hands of resulting company therefore, assessee i.e. the resulting company, is not entitled to carry forward and set off the said expenditure under section 72A(4). ITO vs. Mahyco Vegetable Seeds Ltd. (2008) 13 DTR 574 (Mum.) (Trib.) / (2008) 25 SOT 46 (Mum.)
Depreciation – Computers – S. 32	32	The assessee was held entitled to additional depreciation on computers installed for the following functions : (a) data processing (b) system designing (c) software development and supply. If office premises are used as industrial premises for carrying out either of the above activities, then the computers installed for either of such purposes would constitute plant and machinery and not just office equipments. CIT vs. Statronics & Enterprises (P) Ltd. (2007) 165 Taxman 153/288 ITR 455 (Guj.) / (2007) ITR 455 (Guj).
Depreciation – Decoders given to cable operator on loan eligible for depreciation – S. 32	32	The decoders given on loan to the cable operators forming a part of business of the assessee in distribution of satellite channels and signals relating to satellite channels. Hence, provisions of section 32 are applicable. CIT vs. Turner International India (P) Ltd. [2008] 166 Taxman 22 [Del.]; (2008) 217 ITR 378 (Del.)
Depreciation - Earth moving machinery - S. 32	S. 32	Though JCB has been categorized as an excavator and its main function is removing soil or earth, yet at the same time, JCB's another function is to carry or transport removed soil and dump it at another site to discharge function like transshipment and loading into another vehicle and therefore, for the purpose of depreciation, JCB can be treated as a motor lorry and it would be eligible for higher depreciation at 40 percent. Gaylord Constructions vs. ITO (2008) 175 Taxman (Magz.) 99 (Cochin)
Depreciation – Forex fluctuations on last day of previous year – Ss. 32, 43A	32	The assessee was entitled to increase claim of depreciation on increased liability due to foreign exchange rate fluctuation on the last date of previous year. CIT vs. Honda Sielpower Products Ltd. (2007) 164 Taxman 275 (Delhi).
Depreciation – Intangible - Non Compete Fee – S. 32(ii)	32(ii)	Commercial right comes in to existence whenever the assessee makes payment for non compete fee and after obtaining no compete right, the assessee can develop and run his business without bothering about the competition and therefore non compete right is intangible asset eligible for depreciation. ACIT vs. Real Image Tech. (P) Ltd. (2008) 14 DTR 138 (Chennai) (Trib.)
Depreciation - Intangible Asset - Right Acquired Under Contract To Carry On Business – S. 32(1)(i) & 32(i)(ii)	32(1)(i) & 32(1)(ii)	Assessee having acquired from a person rights of catering for HLL along with all paraphernalia and articles lying at the canteen of HLL for consideration of Rs. 27 lakhs, was entitled for depreciation under section 32(1)(i) in respect of such articles and paraphermalia and under section 32(i)(ii), in respect of right of catering which was a tool to carry on the

		business, hence, intangible. Skyline Catering (P) Ltd. vs. ITO (2008) 13 DTR 150 (Mum.) (Trib.)
Depreciation – Lease of Assets – S. 32	S. 32	Assets purchased and leased back to same person. Assessee entitled to depreciation. ICICI Ltd. vs. Jt. CIT (2008) 307 ITR (AT) 262 (Mum.)
Depreciation – Less than Rs. 5,000/- – S. 32	32	Where cost of individual part of machinery is less than Rs. 5,000/-, 100 per cent depreciation is allowable on each individual part. CIT & Anr. vs. Jhunjhunwala Vanaspati Ltd. (2008) 11 DTR 21 (All)
Depreciation – Motor Trucks – S. 32	32	Higher depreciation to be allowed only if there is evidence that the assessee was in business of hiring out motor vehicles. CIT vs. Gupta Global Exim P. Ltd. (2008) 305 ITR 132 (SC) / 216 CTR 368 (SC) / (2008) 7 DTR 62 (SC).
Depreciation – Option to claim – Block of Assets – S. 32(1), 34(1)	32(1) & 34(1)	Section 34(1) of the Income-tax Act, 1961 (for short, "1961 Act") has been omitted w.e.f. 1-4-1988. Therefore, remanded the matter back to the High Court after setting aside the impugned order of the High Court on this question, with the direction to the High Court to consider: whether the assessee has an option in law to claim partial depreciation in respect of block of assets. In the case of Mahendra Mills (supra) the concept of block of assets was not there. In view of the Hon'ble Apex Court, substantial question of law did arise for determination before the High Court under section 260A of the 1961 Act, particularly when section 34(1) of the 1961 Act stood omitted w.e.f. 1-4-1988. The High Court is also requested to consider whether the judgment of this Court in the case of Mahendra Mills (supra) would apply to the assessment years under consideration. In this connection the High Court is also requested to take into account the scope of Explanation 5 to section 32(1) of the 1961 Act, made by the Finance Act, 2001. JCIT vs. United Phosphorus Ltd. [(2008) 10 RC 365] 299 ITR 9.
Depreciation – Plant – Gas cylinder – S. 32	32	Assets leased out, namely gas cylinders and spindles, each gas cylinder and spindle be treated as plant and hence 100% depreciation on each of them is allowable. CIT vs. M/s. Synergy Financial Exchange Ltd. 2007 TLR 770 (Mad.)
Depreciation – Plant – Road – S. 32	32	Roads and culverts in factory premises and storage tank and pipelines are plants. Hence, higher rate of depreciation is not allowable. CIT vs. MICO Ltd. (2007) TLR (Oct.) 622 (Kar.)
Depreciation – Poultry shed – S. 32	32	Poultry shed constitutes plant, which is eligible for deprecation @25 per cent. V.N. Dubey vs. CIT (2008) 10 DTR 175 (MP).
Depreciation – Poultry shed – Ss. 32 & 32A	32 & 32A	Poultry shed specifically designed is a plant which is entitled to both depreciation and investment allowance. CIT vs. Shivalik Hatcheries P. Ltd. (2008) 9 DTR 154 (HP)
Depreciation – Rate – Hotel building – S. 32	32	Even though a part of hotel building is used for residence of employees and another let out to bank and shops, the entire hotel building has to be treated as a composite building entitled to depreciation @ 20 per cent. CIT vs. Sangu Chakra Hotels (P) Ltd. (2007) 212 CTR 215 (Mad.) / (2008) 292 ITR 591 (Mad) / 161 Taxman 257 (Mad).
Depreciation – S. 32	32	Allowance of depreciation on car and interest on car loan cannot be disallowed on the ground of personal use.

		Mangat Ram Bhagwat Swarup vs. I.T.O, ITA No. 2953/Del/2007, Bench–SMC, A.Y. 2001-02, dt. 8-8-2007 - BCAJ p. 29, Vol. 39-E, Part 1, October, 2007.
Depreciation – S. 32	32	Depreciation being a statutory deduction should be allowed as deduction even if the net profit rate was applied in assessee's case by the A.O. CIT vs. Pran Nath Gupta [(2008) 202 Taxation 439 (P & H)]
Depreciation – S. 32	32	Depreciation u/s. 32 of the Act cannot be denied to the assessee on the building purchased by the assessee only on the ground that the building acquired by him was not registered as required under the Registration Act, when under the agreement for purchase of building the assessee had made substantial payment to the seller and also taken possession of the premises. Deepak Nitrite vs. CIT (2008) 7 DTR 313 (Guj.)
Depreciation – S. 32	32	Held that provision of section 32 (2) as existed in the statute as on 1-4-2003, would be applicable for A.Y. 2003-04 to decide the treatment to be given to unabsorbed depreciation relating to A.Y. 1999–2000, as it is well settled that, law applicable to any assessment is the law that prevails as on the first day of April of the relevant assessment year, and it is the duty of Assessing Officer to apply the said law. Jain Ushin Ltd. vs. DCIT (2008) 171 Taxman 111 (Delhi).
Depreciation – S. 32(1)(iv)	32(1)(iv)	The legislature intended to have different scope for "business" and "profession" in various clauses of section 32(1). Therefore, when in erstwhile clause (iv) the legislature has used only "business" then the clause would not apply to "profession". G. C. Chokshi vs. CIT [2007] 295 ITR 376(SC).
Depreciation – Trial production – S. 32	32	Assessee having used the plant for manufacture of sugar during the relevant assessment year, was eligible for depreciation. CIT vs. Piccadily Agro Industries Ltd. (2007) 212 CTR 505 (P&H).
Depreciation – User for business – Active or Passive – S. 32	32	Lessee having failed to use the film roll due to strike in film industry, there was passive user and assessee, lessor was entitled to depreciation on the film roll. CIT vs. Heera Financial Services Ltd. (2007) 212 CTR 532 (Mad.)
Depreciation – User for business – Active or Passive – S. 32	32	Where the machinery is kept ready for use but could not be put to use for non-receipt of orders, the assessee would be entitled to depreciation. CIT vs. Nahar Exports Ltd. (2007) 213 CTR 20 (P&H) / (2008) 296 ITR 419 (P&H).
Depreciation at higher rate : Commercial vehicles on hire purchase basis – S. 32	32	The assessee-company, which carried on the business of leasing out commercial vehicles on hire purchase basis, claimed depreciation at 40 per cent on all the leased out commercial vehicles. The Assessing Officer disallowed the claim and restricted the deprecation to 24 per cent on the ground that the assessee-company itself had not utilized the commercial vehicles on hire. It was held, that the assessee was entitled to the higher rate of depreciation. The Supreme Court has granted special leave to the Department to appeal against this judgment : see [2008] 299 ITR (St.) 92-Ed.] CIT vs. Shiva Tex Yarn Ltd. (2008) 302 ITR 20 (Mad.)
Depreciation Mandatory – S. 80IB,	80IB & 80HH	Dabur India Ltd vs. CIT Source: www.itatonline.org

80HHC	C	
Depreciation– Additional Depreciation – S. 32A	32A	Computer installed by assessee engineering company used for processing raw materials, data, wages and salary payment and for monitoring the details of production was entitled to additional depreciation. T.R.F. Ltd. vs. CIT (2007) 213 CTR 557 (Jhar.) / (2008) 296 ITR 78 (Jhar).
Depreciation– unabsorbed depreciation – set off against capital gains – S. 32		Assessee company claimed set-off of capital gains against brought forward unabsorbed depreciation on ground that as per amended provisions of section 32(2) with effect from 1-4-1997, cumulated unabsorbed depreciation brought forward as on 1-4-1997 could be set off against income under any other head for assessment year 1997-98 and seven subsequent years. Assessing Officer rejected assessee's claim and brought capital gains to tax. Whether in view of amendment to section 32 with effect from 1-4-1997, assessee was entitled to set off of unabsorbed depreciation brought forward as on 1-4-1997 against capital gains of relevant assessment year. CIT vs. Pioneer Asia Packing (P) Ltd. (2008) 170 Taxman 127 (Mad.) / 214 CTR 202 (Mad) / 1 DTR 193 (Mad).
Disallowance – Excessive or unreasonable – Ss. 40A(2), 40(b), 36(i)(ii)	40A(2), 40(b), 36(i)(ii)	Assessee firm paid Interest to Partners and their family members at 12% / 18% p.a., as against Interest earned on FDR at average rate of 9% p.a. Assessing Officer worked Interest paid, in excess of interest received and disallowed same u/s 40 A(2). It was held that : i) If condition provided in section 36(i)(iii) that money must be borrowed for business, is satisfied then no disallowance be made except as per provisions of section 40(b). ii) Section 40(b) only restricts the allowance up to the limit prescribed in the section. iii) That provisions of section 40(b), being special provision, would prevail over general provisions of section 40A. Based on above, in the instant case, as 40 A(2) had no application, impugned disallowance of Interest being excessive was deleted. Syntholab Chemicals & Research vs. ACIT (2008) 172 Taxman 38 (Mumbai).
Disallowance – S. 14A	14A	Proportional expenditure towards dividend income could not be disallowed under section 14A without establishing nexus. Space Financial Services vs. ACIT (2008) 115 TTJ 165 (Del.)
Disallowance – S. 40(a)(i)	40(a)(i)	Commission paid to non-resident agent outside India for services rendered outside India could not be disallowed under section 14A. CIT vs. Ardeshi B. Cursetjee & Sons Ltd. (2008) 115 TTJ 916 (Mum.)
Disallowance – S. 40A(3)	40A(3)	When multiple payments were made to a single party on the same day, it is, for the purpose of s. 40A(3), not required to be clubbed to treat it as one payment and therefore, not violative of s. 40A(3) and since the payments had been made after banking hours. CIT vs. Balkrishan Jagdish Chand (2007) 213 CTR 174 (P&H).
Disallowance – TDS – S. 40(a)(i)	40(a)(i)	Held that tax is not required to be deducted from payments made to (i) telecom operators for down-linking (bandwidth) charges and (ii) subscription fees paid by way of an access fee to database maintained

		outside India. Hence no disallowance u/s 40(a)(i) ACIT vs. Infosys Technologies Ltd., ITA Nos. 653 & 969/Bang./2006, Bench - B, A. Ys. 2002-03 & 2003-04, dt. 17-10-2007 – BCAJ p. 638, Vol. 39-E, Part 6, March 2008.
Disallowance – Contribution to Provident Fund – S. 43B		Amendment made to s. 43B by Finance Act, 2003 is effective from 1st April, 2004; i.e., asst. year 2004-05 and, therefore prior to that, contribution towards PF made beyond the due date could not be allowed as deduction notwithstanding the fact that payment was made before filing the return. CIT vs. Godavari (Mannar) Sahakari Sakhar Karkhana Ltd. (2007) 212 CTR 384 (Bom.)
Disallowance – Expenditure – S. 14A		It was clear that no part of the interest expenditure can be attributable to or can be said to have a nexus with the dividend income. In absence of nexus between such expenditure and the exempt income disallowance made by the A.O. deleted. DCIT vs. Falak Investments Pvt. Ltd., ITA No. 7901/Mum/2004, Bench – A, A. Y. 2001-02, dt. 26-12-2007 – BCAJ p. 519, Vol. 39-E, Part 5, February 2008.
Disallowance Expenditure – S. 43B	43B	Excise duty collected by assessee though be regarded as trading receipts, to be allowed on actual payment to Government. Mere furnishing of bank guarantee to that effect pursuant to order of Court is not equivalent to actual payment of excise duty. Mugat Dyeing and Printing Mills vs. ACIT 2007 TLR 665 (Guj.)
Disallowance- S. 40A (2) (b)	40A(2) (b)	Discount sales given to sister concern are not covered under the provisions of section 40A (2) (b) of the income tax Act, 1961. DCIT v Orgo ChemGuj.Pvt Ltd. ITA no 7872 /Mum/2004 Bench H, Dt. 17-8-2007. (2008) 40–B BCAJ JAN 520 (unreported).
Disallowances – Sales Tax deferred and converted into loan – S. 43B	43B	Deferred sales tax converted into loan and deemed to have been paid under the Sales-tax Act as per amended S. 22 of the M.P. General Sales-tax Act cannot be disallowed u/s. 43B. ACIT vs. Perfect Pumps (P) Ltd. (2007) 212 CTR 145 (MP).
Dividend Stripping 94(7)	94(7)	Where the assessee bought units of a mutual fund, received tax-free dividend thereon and immediately thereafter redeemed the units and claimed the difference between the cost price and redemption value as a loss and the same had been upheld by a Five Member Special Bench of the Tribunal as a genuine loss High Court affirmed the order of the special bench. CIT vs. Wallfort Shares & Stocks Source: www.itatonline.org
Dividend Stripping And Bonus Unit Stripping – S. 94(7), 94(8)	94(7) & 94(8)	The assessee purchased certain bonds on 9-12-2002 at rate of Rs. 15.54 and sold the same on 16-12-2002 at rate of Rs. 10.40 and claimed as short term capital loss. The assessee had also received certain additional units as bonus units on holing aforesaid bonds. The AO disallowed the loss applying the provision of 94(7). In appeal the CIT(A) held that provision of section 94(8) will be applicable. As the provision was inserted by the Finance Act (No. 2) Act 2004 with effect from 1-4-2005 since case under consideration was for the Asst year 2003-04, the

		provision of section 94(8) were not applicable. The Hon'ble Tribunal confirmed the view of the CIT(A) and held that provision of section 94(7) can not be applicable for bonus unit stripping. Dy. CIT vs. Ghanshyam Dass Seth (2008) 26 SOT 166 (Delhi)
Double Taxation Avoidance Agreement - India And Singapore - S. 90, ARTICLE 5&7	90	Assessee a Singapore Telecasting Company deriving advertisement revenue from India through its dependent agent PE in India by way of contracts made outside India on principal to principal basis and paying fee to its agent on arms's length price basis would not be liable to tax in India in respect of advertisement revenue received by assessee in view CBDT circular no 742 dt. 2nd May ,1996 r.w. Art. 7 (1) of DTAA between India and Singapore nor would be advertisement revenue be taxable in India by virtue of CBDT Circular No 23 dt. 23 rd July 1969. Set Satellite (Singapore) PTE Ltd. vs. Dy. CIT (2008) 11 DTR 313 (Bom.) / (2008) 218 CTR 452 (Bom).
Double Taxation Relief – S. 90	90	(i) Merely because India has entered into a DTAA with a foreign country, assessee cannot be denied taxability under scheme of Income-tax Act and scheme of DTAA cannot, therefore, be thrust upon assessee. (ii) Even when assessee had incurred loss in foreign country [Permanent Establishment (PE) State], it would be eligible to claim taxation in India on basis of its worldwide income, in disregard of scheme of taxability under DTAA and, in effect, can claim deduction of loss incurred by such PE while computing its total income liable to tax in India. Dy. CIT vs. Patni Computer Systems Ltd. [114 ITD 159 (PUNE)].
Double Taxation Relief – S. 90	90	Advertisement revenue received by a Singapore telecasting company through its dependent agent PE in India by way of contracts made outside India on principal to principal basis and paying fee to its agent on an arm's length price basis would not be liable to income tax in India with respect to advertisement revenue received by the assessee. SET Satellite (Singapore) PET Ltd. vs. Dy. Director of Income Tax (International Taxation) & Anr. – (2008) 11 DTR 313 (Bom)
DTAA – Dividend Income – S. 90	90	Under Article 11 of the India–Malaysia DTAA, dividend is taxable only in the contracting state where such income accrues. Therefore, dividend income received from a Malaysian company would not be taxable in the hands of the assessee. DCIT vs. Torquoise Investment and Finance Ltd. (2008) 300 ITR 1 (SC). Editorial Note: The new treaty with Malaysia has become operative from 2004.
Duty Drawback – S. 80-IB	43B	Income of the assessee from duty drawback cannot be held to be income 'derived from' specified business. CIT vs. Five Star Rugs (2007) 164 Taxman 348 (P & H)
Duty Drawback – S. 80-IB	80-IB	Duty drawback sums do not qualify for deduction u/s. 80-IB. Paramount Impex vs. CIT (2007) 165 Taxman 181 (P&H).
Employees' Contribution to PF – S. 43B	43B	PF deposited by assessee into Govt. A/c. with some delay. As the deletion of second proviso to Sec. 43B by the Finance Act, 2003 w.e.f. 1-4-2004 being curative, it is justified to delete the addition. CIT vs. Desh Rakshak Aushdhalaya Ltd. 218 CTR 7 (Uttarakhand) /

		(2008) 10 DTR 125 (Uttarkhand).
Estoppel - Admission by Assessee's counsel - S. 250	S. 250	Department can not invoke the principle of estoppels by acting on the request made by the assessee's counsel to postpone the assessment proceedings for giving effect to CIT (A)'s order till the receipt of order of the Tribunal. Assessing Officer should have acted accordance with law. Rahghava Health Care Ltd. vs. Dy. CIT (2009) 120 TTJ 124 (Visakha)
Estoppel - Concession By Assesses Counsel – S. 153(2A), 153(3)(iii)	153(2A)	Department cannot invoke the principle of estoppels by acting on the request made by assesses counsel to postpone assessment proceedings for giving effect to CIT(A)s order till the receipt of order of the Tribunal. AO should have acted strictly in accordance with the law. Raghava Health Care Ltd vs. Dy. CIT (2008) 14 DTR 341 (Visakha) (Trib.)
Exchange Rate Gain Difference - Allowable In The Year In Which Exports Are Made. S. 80HHC	80HHC	306 ITR 1 (Mum), 115 ITD 167 (Mum) ACIT vs. Prakash I. Shah (Special Bench Mumbai)
Exemption – Export – Service charges of export – S. 10A	10A	Service charges received by assessee for manufacturing jewellery for others on job work being operational income is eligible for exemption under section 10A. Service charges earned by assessee from job work contracts having direct and proximate connection with business of eligible undertaking would form part of total turn over for purpose of sub section (4) of section 10A. Inter Classic Jewellery (I) (P) Ltd. vs. ITO (2008) 3 DTR 339 (Mum.)
Exemption – Interest earned – Eligible – S. 10B	S. 10B	Interest income received by the assessee from its sister concern will be eligible for exemption under section 10B. Profit and gains of business or profession and income from other sources are different species of income. Section 2(24) of the Income-tax Act does not categories separately profits and gains of business or profession. The expression "profits and gains" as used in section 2(24) is wider and is not confined to "profits and gains of business or profession". Section 10B provides for exemption with respect to any "profits and gains" derived by the assessee, and is not confined to "profits and gains of business or profession". CIT vs. Hycon India Ltd. (2009) 308 ITR 251 (Raj.)
Exemption – Investment – S. 54E	54E	Assessee investing additional amount of compensation in respect of acquisition of its land within six months from date of its receipt is entitled to claim exemption u/s. 54E. Darapaneni Chenna Krishnayya (HUF) vs. CIT (2007) TLR (Oct.) 643 (AP) / (2007) 291 ITR 98 (AP) / (2007) 210 CTR 538 (AP).
Exemption – Retirement – S. 10(10C)	10(10C)	Employees retiring under Optional Employees Retirement Scheme of RBI fulfil the requirement of section 10 (10C), r/w R. 2BA, hence eligible for exemption under section 10(10C) to the extent of Rs 5 lakhs. Anant Kumar Agarwal vs. ITO (2008) 3 DTR 97 (Luck.) (TM).
Exemption – S. 10A	10A	Service charges for job work received by assessee being its operational income is eligible for exemption under section 10A. Inter Classic Jewellery (I) (P) Ltd. vs. ITO (2008) 114 TTJ 402 (Mum.)

Expenditure incurred in relation to income not includible in Total Income – S. 14A	14A	(a) Provisions for quantification of amount of disallowance as per ss. 14A(2) and 14A(3) are procedural and therefore, apply to all pending matters. (b) AO cannot disallow any expenditure at his own discretion or on ad hoc basis but he has to compute such disallowances in the manner as provided u/ss. 14A(2) and 14A(3). Asstt. CIT vs. Citycorp Finance (India) Ltd. [108 ITD 457 (Mum)].
Export – Additional Deduction – S. 80HHC	80HHC	AO is duty bound to allow deduction with reference to profits determined in the assessment proceedings. CIT vs. Bawa Skin Co. (2007) 165 Taxman 102 (P&H) (2007) 294 ITR 537 (P&H).
Export - Computation - DEPB – S. 28(iiid), (iiie) 80 HHC(3)	S. 28(iiid), (iiie) 80 HHC(3)	What treatment should be given to DEPB license benefits / receipts by the assessee while computing deductions under section 80HHC(3) of the Income -tax Act. Matters were set aside to the assessing officer. Dy. CIT vs. Zaveri and Co. Exports (2008) 307 ITR (AT) 1 (Ahd.) (SB)
Export – Deduction – Interest on Export Packing Credit – S. 80HHC	80HHC	On the facts of the case the Hon'ble High Court held that interest on export packing credit term loan and depreciation on computers which were directly related to manufacture and export activities of the assessee should not be apportion proportionately between the manufacturing and trading activities for the purpose of calculating deduction u/s. 80HHC. CIT vs. Jyoti Overseas Ltd. [(2007) 201 Taxation 527 (MP)]
Export – Deduction – S. 80HHC	80HHC	Commission earned by the assessee, a supporting manufacturer, from export house was an integral part of sale price and constituted profit eligible for deduction u/s. 80HHC of the Act. CIT vs. Aswini Fisheries Ltd. – (2008) 11 DTR 350 (Mad)
Export – Deduction – S. 80HHC	80HHC	Deduction u/s. 80HHC of the Act could not be denied to the assessee where the audit report in Form No. 10 CCAB as prescribed under the Income Tax Rules were filed during the assessment proceeding when the assessee made the claim for deduction u/s. 80HHC of the Act for the first time by filing audit report. ITO vs. VXL India Ltd. (2008) 12 DTR 203(Guj.) / (2008) 219 CTR 242 (Guj).
Export – Deduction – S. 80HHC	80HHC	Deduction under section 80HHC in the case of MAT assessment is to be worked out on the basis of adjusted book profit under section 115JB. ITO vs. Amalgamated Bean Coffee Trading Co. (P) Ltd. (2008) 117 TTJ 424 (Bang.) / (2007) 19 SOT 1 (Bang) / (2008) 9 DTR 319 (Bang).
Export – Deduction – S. 80HHC	80HHC	While computing deduction u/s. 80HHC of the Act, ninety per cent (90%) of the export house premium is not to be excluded under clause (baa) of Explanation to s. 80HHC of the Act. CIT vs. Choice Trading Corporation Ltd. (2008) 12 DTR 22 (Ker.)
Export – Deduction — S. 80HHC	80HHC	DEPB credit amount constitutes profits of export business eligible for deduction. Interest on EEFC account is to be treated as profits and not to be excluded for calculation of deduction u/s. 80HHC. Interest on FDR's maintained by way of guarantee for export business is eligible for deduction u/s. 80HHC.

		Shah Originals vs. ACIT (2007) 112 TTJ 754 (Mum.) / (2008) 19 SOT 568 (Mum).
Export – Deduction – S. 80HHC r.w.s. 80-IB	80HHC r.w.s. 80-IB	The Tribunal relying on the decision of the Supreme Court in the case of IPCA Laboratory Ltd. and of the Karnataka High Court in the case of RPG Telecom, held that the deduction allowable u/s. 80HHC cannot be reduced by the amount of deduction u/s. 80-IB. It was also noted that the assessee had not claimed more than 100% of its income and the decision of the Gujarat High Court in the case of Sidhpur Isabgul Processing Co. Ltd. also supported the assessee's case. Vijay Industries vs. ITO, ITA No. 247/JP/2005, Bench–A, A.Y. 2001-02, dt. 29-6-2007, BCAJ p. 152, Vol. 39-E, Part 2, November, 2007.
Export – Deduction – S. 80HHC(3)(b)		Assessee engaged in business of export of 'trading goods'; as per provisions, exporter of trading goods entitled to deduction in respect of export turnover as reduced by direct costs and indirect costs attributable to such export. Assessee claimed 10% adjustment of export incentive against indirect cost of trading goods while allowing deduction under section 80HHC of Act. Claim disallowed by authorities as well as High Court. Hence, present appeal. Held, 'Attributable' mentioned in section 80HHC(3)(b) of Act indicates that apportionment (principle of attribution) not omitted from section 80HHC(3)(b) of Act. Accordingly, assessee entitled to claim deduction of expenses incurred by him from export turnover. Estimated 10% adjustment rightly calculated. Thus, assessee's claim for 10% adjustment of export incentive against indirect costs attributable to such exports justified and allowed. Order of High Court set aside, appeal allowed. Hero Exports vs. CIT [(2008) 10 RC 103]
Export – Deduction u/s. 80HHC on profits and gains from transfer of DEPB	80HHC	By virtue of the amendment made by the Taxation Laws (Amendment) Act, 2005 profit from transfer of DEPB is deemed to be the profit and gains of the business as the amendment is held to be retrospectively effective from 1-4-1998 and therefore, such profit is entitled to deduction u/s. 80HHC. Asstt. CIT vs. K. S. International (2007) 108 ITD 709 (Delhi).
Export – DEPB - S. 80 HHC	80HHC	In view of insertion of clause (iiid) and (iiie) in section 28 as well as insertion of a new proviso to section 80HHC(3) with retrospective effect from 1st April 1998, for including DEPB receipts as part of business income, the issue is to be processed a fresh in accordance therewith for computation of deduction under section under 80HHC(3). Dy. CIT vs. Zaveri & Co. Exports & Ors. (2008) 14 DTR 334 (Ahd.)(SB)(Trib.)
Export – Export of master copies of film songs and music eligible of deduction u/s. 80HHC – S. 80HHC	80HHC	The export of master copies of film songs and music along with rights to make copies and sell cassettes outside India is a sale of goods or merchandise for the purpose of deduction u/s. 80HHC. CIT vs. Giza Impese (P.) Ltd. [2008] 166 Taxman 30 [Mad.]
Export – Interest – Deduction – S. 80HHC	80HHC	Interest earned on short term deposit made with bank out of advance received from foreign buyers was held to be business income eligible for deduction u/s. 80HHC of the Act, as the deposits in question were

		having close link/nexus by with business activity of the assessee. CIT vs. Production P. Ltd. [(2007) 201 Taxation 639 (Karn)]
Export – Meaning of profit – S. 80HHC	80HHC	The word profit in ss. 80HHC(1) and (3) means a positive profit. Deduction can be permitted only if there is positive profit in the exports of both self manufactured goods as well as trading goods. If there is a loss in either of the two then the loss has to be taken into account for the purpose of computation of profits. S. 80AB is overriding section with respect to Chapter VIA. S. 80HHC does not provide that its provisions are to prevail over s. 80AB or any other provisions of the Act. S. 80HHC would thus be governed by s. 80AB. A. M. Moosa vs. CIT [2007] 294 ITR 1 (SC), 212 CTR 89
Export – Netting of interest income – S. 80HHC	80HHC	Interest paid by assessee is liable to be reduced from interest received by it while calculating deduction u/s. 80HHC(1), read with Explanation (baa) CIT vs. Anand Kumar (2007) 164 Taxman 330 (Delhi)
Export – Processing charges whether part of total turnover – S. 80HHC	80HHC	Processing charges, which are part of gross total income, forms an item of independent income like rent, commission, etc. and, therefore, 90% of the processing charges have to be reduced from the gross total income to arrive at the business profit, and therefore, they have also to be included in the total turnover to arrive at the business profit in terms of clause (baa) of the Explanation to s. 80HHC(3). CIT vs. K. Ravindranathan Nair [2007] 295 ITR 228 (SC), 213 CTR (SC) 227
Export – Profit of the business – DEPB – S. 8OHHC	S. 8OHHC	If an assessee sells the DEPB credit n the open market, then the entire sale proceed becomes profit since no specific expenditure is incurred in obtaining such credit and 90% of the sale value is to be excluded in computing the profits of the business as per cl. (baaa) of explanation to section 80HHC. Assessee was entitled to deduction with reference to profit on sale of DEPB entitlement only and not with reference to all the three export incentives received by the assessee i.e. (1) profit on sale of DEPB entitlements (2) duty draw back and (3) NOE quota transfer fee. Yasmeen Silk Corporation vs. ITO (2008) 16 DTR 507 (Mum.) (Trib.) Editorial note:- On the issue of taxability of DEPB matter is pending before special bench in M/s. Tanmay Exports & Kalpatara Colours & Chemicals
Export – S. 80HHC	80HHC	The amendment by the Finance (No. 2) Act, 1991, in section 80HHC to the effect that business profit will not include receipts by way of brokerage, commission, interest, service charges, etc., is only prospective and not retrospective in nature. Order of High Court set aside and appeal allowed. K. K. Doshi and Co. vs. CIT (2008) 297 ITR 38 (SC), 215 CTR 114.
Export – Surrender at the firm of survey – Deduction – S. 80HHC	80HHC	Where the assessee surrendered income as a result of survey on account of excess stock and undisclosed investment in building and claimed the same to be eligible for deduction u/s. 80HHC of the Act. On appeal High Court following it earlier judgment in the case of National Legguard Works – [(2007) 201 Taxation 243] held that deduction u/s. 80HHC of the Act is available only on fulfilment of certain conditions specified u/s.

		80HHC therein. There can be no presumption in such case, that surrender made by the assessee on account of difference in stock at the time of survey represented income from exports. Sarla Handicraft P. Ltd. vs. Addl. CIT [(2007) 201 Taxation 529 (P&H)]
Export – Turnover — S. 80HHC	80HHC	Turnover which is related to the profit eligible for exemption u/s. 10B cannot be included in the export turnover for the purposes of deduction u/s. 80HHC. ACIT vs. Mahabir Spinning Mills Ltd. (2007) 112 TTJ 966 (Chd.)
Export – Unabsorbed Losses – S. 32, 72A, 80HHC	32, 72A & 80HHC	That the unabsorbed losses had to be deducted to arrive at the profits for purposes of calculating the special deduction u/s. 80HHC. CIT vs. Ashok Leyland Ltd. (2008) 297 ITR 107 (Mad.) / (2008) 215 CTR 187 (Mad) / (2008) 170 Taxman 185 (Mad).
Export of Tea – S. 80HHC	80HHC	The Supreme Court held that deduction under section 80HHC was to be allowed only after the appropriation of the income from tea under rule 8(1) of the Income Tax Rules and not on the total income. The Supreme Court further held that important word in section 80HHC are "profits derived from export". The word derived would mean derived from the source. The source has to be in section 14. Income covered by section 10(1); i.e., agricultural income which is not chargeable to tax, does not fall under section 14 and therefore will not fall under the various computation sections; i.e., sections 15 to 59. CIT vs. Williamson Financial Services (2008) 297 ITR 17 (SC) / (2008) 213 CTR 612 (SC) / (2007) 165 Taxman 638 (SC).
Export Undertaking – Exemption u/s. 10B	10B	(a) Section 10B is a code by itself as it contains scheme of taxation formulated by the Govt. for taxability of units set up in the export processing zone. (b) Exemption u/s. 10B is available for five consecutive assessment years falling within the block of eight years beginning from the year in which the undertaking commences commercial production as specified by an assessee at his option. Therefore, once the period of five years is specified, it is irrevocable and therefore, the assessee cannot thereafter seek to change the five years period. Only condition is that the exemption cannot extend beyond the period of eight years from initial assessment year. (c) The requirement of filing declaration as per the provisions of s. 10B(7) is directory in nature and not mandatory and therefore, it is open to an assessee not to claim tax holiday benefit u/s. 10B for any one year or more of the relevant block of five assessment years by filing declaration u/s. 10B(7). If the assessee opts out of the provisions of section 10B by filing declaration u/s. 10B(7) during the course of assessment proceeding of the relevant assessment year then in such case the revenue could not thrust the exemption upon the assessee. Moserbaer India Ltd. vs. Jt. CIT [108 ITD 80 (Delhi)].
Export Undertaking – Interest – S. 10B	10B	Interest received by assessee from sister concern on advances against purchase of goods is "profits and gains" eligible for exemption under section 10B. CIT vs. Hycron India Ltd. (2008) 13 DTR 13 (Raj.) / (2008 219 CTR 288 (Raj).
Family Arrangement	2(47),	Transfer of assets under family arrangement, whereby assets and

– Capital Gain – Transfer – Ss. 2(47), 45	45	liabilities, including flats, were divided among the members, cannot be treated as transfer u/s 2(47), and be taxed as capital gains, on the presumption that family arrangement was not bonafide and it was a colourable device to save tax, when no positive evidence or material was brought in record to establish that arrangement was not actually acted upon. Shirish S. Maniar vs. ITO (2008) 167 Taxman 81 (Mumbai).
Free Trade Zone – Deduction – S. 10A	10A	Expenditure incurred in foreign currency is to be excluded from Export turnover and from total turnover to grant relief under section 10A. ITO vs. Servion Global Solutions Ltd. (2008) 117 TTJ 380 (Chennai)
Free Trade Zone – S. 10A	10A	Held, that while computing deduction u/s 10A, if a certain expenditure is excluded from export turnover, same should be excluded from its total turnover also. ACIT vs. Infosys Technologies Ltd. (2008) 172 Taxman 134 (Bangalore).
Free Trade Zone – Exemption – S. 10A	10A	Exemption u/s. 10A cannot be denied to the assessee simply because it has availed of deduction u/s. 80HHE in an earlier year. DCIT vs. Interra Software (I) Pvt. Ltd. (2007) 112 TTJ 982 (Del.)
Fringe Benefit Tax		The Supreme Court held that the transportation cost incurred in bringing non-resident employees to a place of work in India and back to their home country is liable to FBT. R & B Falcon (A) Pty Ltd. vs. CIT (2008) 301 ITR 309 (SC) / (2008) 169 Taxman 515 (SC) / (2008) 216 CTR 289 (SC).
Grant Of Right Of Development – No Transfer Of Capital Asset		CIT vs. Atam Prakash & Sons (2008) 12 DTR 1 (Del.) / (2008) 219 CTR 164 (Del)
Grant Of Stay Beyond 365 Days By ITAT- Permissible Before 1.10.2008		UPS Freight Services vs. ACIT Source: www.itatonline.org
Gross Total Income – Deduction under Chapter VIA – S. 80AB	80AB	The Supreme Court held that loss from one division is required to be set off with the profit of another division before determining the gross total income on which deduction under Chapter VIA could be claimed. And if the effect of the adjustment is that the gross total income is nil then the assessee is not entitled to claim any deduction under Chapter VIA. The Supreme Court further held that it is well settled that where the majority of High Courts have taken a certain view on the interpretations of certain provisions, the Supreme Court should lean in favour of that view. Synco Industries Limited vs. Assessing Officer (2008)299 ITR 444 (SC) / (2008) 215 CTR 385 (SC) / (2008) 168 Taxman 224 (SC).
Heads of income – S. 14	14	The totality of facts and circumstances suggested that the assessee intended to do a business in shares and mutual funds. Therefore, according to it, the resultant loss or profit had to be held as loss from business and can be set off against other income. ITO vs. Navneet Kumar Malpani, ITA No. 223/Jp/2006, Bench – B, A. Y. 2001-02, dt. 27-8-2007 - BCAJ p. 397, Vol. 39-E, Part 4, January 2008.
Hotel – Convertible	80HH	Where the assessee was running two hotels. It had obtained approval for

Foreign Exchange – Deduction – S. 80HHD	D	the purpose of deduction u/s. 80HHD separately for each of two hotels. Accordingly, the assessee claimed deduction u/s. 80HHD separately and independently in respect of each hotel. High Court held that under section 80HHD deduction with reference to profits and gains of entire business of hotel business is to be determined, instead of determining profits separately for each hotels. Hotel & Allied Trader P. Ltd. vs. Dy. CIT [(2007) 201 Taxation 555 (Ker)]
Hotel – Special deduction – S. 80-IA(4)(iii)	80-IA(4)(iii)	When a hotel was granted certificate by prescribed authorities, Income Tax authorities had no jurisdiction to decide on basis of its own criteria that the assessee is not entitled to special deduction under section 80-IA. Gujarat Jhm Hotels Ltd vs. Director General of I.T. (2008) 305 ITR 386 (Guj.)
Housing Project – Deduction – S. 80-IB(10)	80-IB(10)	As per the provisions of s. 80-IB(10), it was the undertaking that develops or builds the housing project that was entitled to deduction, irrespective of the fact whether it was the owner or not, or whether it was the contractor thereof. The requirement for claiming deduction was that such an undertaking must develop and build housing project, be it on their own land or on the land of others. Radhe Developers vs. ITO, ITA No. 2482/Ahd/2006, Bench–A, A.Y. 2003-04, dt. 29-6-2007, BCAJ p. 271, Vol. 39-E, Part 3, December 2007.
Housing Project – S. 80IB(10)	80-IB(10)	Where some of the residential units in a bigger housing project, treated independently, are eligible for relief under section 80IB(10) relief should be given pro rata and should not be denied by treating the bigger project as a single unit, more so when assessee obtained all sanctions, permissions and certificates for such eligible units separately. Dy. CIT vs. Brigade Enterprises (P) Ltd. (2008) 14 DTR 371 (Bang.)(Trib.)
Housing Project - S. 80IB(10)(A)	80-IB(10)(A)	The expenses incurred for change of land use and administrative / other land development expenses incurred prior to statutory approvals can not result in to commencement of the project. On the facts the land was purchased in the year, 1996. Wall was constructed. WIP of this project on 31-3-1998 was stated to be Rs 10,17,615/-. Original plan was expired after validity period of one year. Revised plan was approved and commencement certificate was issued on 30-9-2000, user of land for non agricultural purposes was permitted on 28-6-2001. The Tribunal held that the A.O. was not justified in denying the deduction u/s. 80IB(10)(a) viz. commencement of the construction after 1-10-1998. ITO vs. Shri Vimal Chand Dhokia. ITAT Mumbai Bench 'A' ITA No. 5520/M/2005 Asst. Year 2002-2003 dt. 19-5-2008 (2008) 40 BCAJ 23 (October, 2008)
Housing Project – S. 80-IB(10)(a)	80-IB(10)(a)	The expenses incurred for change of land use and administrative/other land development expenses incurred prior to statutory approvals can not result into commencement of the project. On the facts the land was purchased in the year 1996. Wall was constructed. WIP of this project on 31-3-1998 was stated to be Rs. 10,17,615/-. Original plan was expired after validity period of one year. Revised plan was approved and

		commencement certificate was issued on 30-9-2000, user of land for non-agricultural purposes was permitted on 28-6-2001. The Tribunal held that the A.O. was not justified in denying the deduction u/s. 80IB(10)(a) viz. commencement of the construction after 1-10-1998. ITO vs. Shri Vimal Chand Dhokia, ITAT, Mumbai Bench 'A' ITA No. 5520/M/2005 Asst. Year 2002-2003 dt. 19-5-2008. (2008) 40 BCAJ 23 (October 2008).
Housing Project – Deduction – S. 80-IB(10)	80-IB(10)	Assessee having completed the construction of various wings of the building under approved plan in two different blocks under different certificates of commencement, was eligible for deduction under section 80IB(10) in respect of one block in respect of which claim for deduction was made and which satisfied the requirement of section 80IB(10). Claim could not be denied by clubbing the two blocks especially when the second block had been kept separate by assessee and for which deduction under section 80IB (10) was not claimed. Saroj Sales Organisation vs. ITO (2008) 3 DTR 494 (Mum.)
Housing Project – Deduction – S. 80-IB(10)	80-IB(10)	The restriction put regarding the maximum commercial area to be built up, introduced by Finance (No. 2) Act, 2004, w.e.f. 1-4-2005 would apply only prospectively, and not retrospectively. Arun Excello Foundation (P) Ltd. vs. ACIT (2008) 166 Taxman 53 (Chennai).
Hundi Loans – S. 69D		Where the A.O. made an addition u/s. 69D treating certain photocopies of paper seized as 'Hundi'. The High Court after analyzing the attributes of a 'Hundi' held that the seized paper cannot be a 'Hundi' as there are always three parties in a 'Hundi' transaction that is the drawer, drawee and payee. The drawer cannot himself be the drawee. The Court further held that a 'Hundi' is normally written in the oriental language as per mercantile custom and the seized paper was written in English language. CIT vs. Capital Flour Mills P. Ltd. [(2008) 202 Taxation 306 (Del)]
Import Entitlement – Industrial Undertaking u/s. 80-IB	80-IB	Profit from sale of import entitlement is not entitled to deduction u/s. 80-IB Asstt. CIT vs. K. S. International (2007) [108 ITD 709 (Delhi)].
Income – Accrual – S. 4	S. 4	Resolution passed on last day of previous year forgoing interest, will not wipe out interest accrued during the year. CIT vs. Sarabhai Holdings P. Ltd. (2008) 307 ITR 89 (SC)
Income - Capital Or Revenue - Restrictive Covenant – S. 4	4	Consideration for transfer of marketing information for a period of three years was revenue receipt, while receipt under non-compete covenant for a period of five years was capital receipt. Dy. CIT vs. Lyka Labs Ltd. (2008) 13 DTR 519 (Mum.) (Trib.)
Income – Capital or Revenue – Subsidy – S. 4	4	Incentive subsidy under a scheme floated with a view to boost the tempo of establishing new sugar factories and substantial expansion of existing factories and to facilitate repayment of term loans for that purpose was capital in nature, notwithstanding the mechanism of price and duty differential through it was routed. CIT vs. Ponni Sugars & Chemicals Ltd. & Ors. (2008) 13 DTR 1 (SC) / (2008) 219 CTR 105 (SC)..
Income – Capital or Revenue Receipt –	4, 28(ii),	Non-compete fee received by assessee constituted capital receipt and it can not be taxable as salaries or profits in lieu of salary.

Non-compete fee – S. 4, 28(ii), 28(iv), 45	28(iv), 45	Saurabh Srivastava vs. Dy. CIT (2008) 1 DTR 126 (Del)(SB), (2008) 113 TTJ 1 (Del.) (SB)
Income - Capital Or Revenue Receipt – Share Application Money - S. 4	4	Share Application Money forfeited by assessee in terms of prospectus and credited to Capital account is Capital receipt not chargeable to tax. Dy. CIT vs. Brijlakshmi Leasing & Finance Ltd. (2008) 12 DTR 150 (Ahd.)
Income – Cash Credit - Gift – NRI - Income from undisclosed Sources – S. 68 & 69	S. 68 & 69	There is no reason to doubt the genuineness of the gift by K to the assessee. The assessee was able to establish the nature and source of money, just because the letter addressed by the A.O. having been returned unserved, additions cannot be made. Kanchan Singh vs. CIT (2009) 17 DTR 389 (All) / (2009) 221 CTR 456 (All) Editorial Note:- Judgment of Supreme Court in CIT vs. P. Mohankala (2007) 291 ITR 278 (SC), considered.
Income - Cash Credit - Gift from NRI – S. 68	S. 68	Assessee having produced an affidavit from the Donor copy of NRI account in the name of Donor, certificate affirming gross salary of the donor and the copy of the official cheque in the name of the assessee from his brother, an NRI has to be treated as genuine in the absence of any contrary evidence to refute the same. Dy. CIT vs. Vijay Prakash (HUF) (2009) 120 TTJ 429 (Asr.) Editorial Note:- After considering the judgment of Apex Court in P. Mohankala & Ors. (2007) 291 ITR 278 (SC)
Income – Gift Received by politicians - S. 4	S. 4	It was found that the money received by the agent was spent on the expenditure of jeeps required for the election campaign of the assessee. The Court held that every receipt is not taxable as income. It may be receipt, but not necessarily "income". Hence, the order of Tribunal was confirmed. CIT vs. Rajesh Pilot (2008) 175 Taxman 8 (Delhi)
Income - Loan Outstanding – S. 41(1)	41(1)	Loan outstanding for more than 10 years not covered by section 41(1) if there is no transfer to profit and loss account. Inderson Leathers (P) Ltd. vs. Addl. CIT (2008) 114 ITD 242 (Asr.)
Income – Mutuality – Non-Occupancy Charges – S. 4	4	Assessee housing co operative society is not liable to income tax in respect of excess occupancy charges recovered by it from its members on the principle of mutuality as the test of complete identity between contributors and participant is satisfied. C. C. I. Chambers Co-operative Housing Society Ltd. vs. ITO (2008) 16 DTR 334 (Mum.) (Trib.)
Income – Non-compete Fee – S. 10 (3), 28(va)	10(3), 28(va)	Amount received by assessee pursuant to a restrictive covenant as non compete fee is not taxable as revenue receipt. Provisions of section 28(va) introduced w.e.f. 1st April 2003, are prospective and not retrospective. Receipt by assessee under restrictive covenant is not taxable as a casual and non recurring receipt under section 10(3). TTK Health Care Ltd. vs. ACIT (2008) 4 DTR 530 (Chennai).
Income – Perquisite - Voluntary Gifts – S. 28(iv)	28(iv)	Assessee never charging any fee from his followers for attending his lectures gift of Rs 122,70,795, received by the assessee on his 80th birth day from his followers out of regard and respect to the qualities of the assessee could not be charged to tax as "benefit" or "perquisite" under

		section 28 (iv) of the Act. Nirmala P. Athavale vs. ITO (2008) 10 DTR 367 (Mum.)
Income - Reimbursement Of Expenses – S. 4	4	Payment by way of reimbursement of expenses incurred on behalf of payer is not income chargeable to tax in the hands of payee. CIT vs. Seimens Aktiongesellschaft (2008) 15 DTR 233 (Bom.)
Income – S. 2(13) & 45	2(13), 45	Stock left with the assessee on sale of the plant and machinery by the creditors in satisfaction of their dues would not constitute a capital asset and accordingly, the profit arising out of sale of such stock could not be taxed as capital gain. CIT vs. Poddar Industrial Corporation (2008) 6 DTR 340 (All)
Income – S. 2(13) & 45	2(13), 45	Where the assessee had no intention to sell the purchased land at a profit nor the assessee was a regular dealer in real estate, piecemeal sale of land by the assessee would constitute disposal of 'capital asset' and not an 'adventure in the nature of trade' and surplus thereof was taxable under the head capital gains. CIT vs. Sohan Khan (2008) 7 DTR 361 (Raj.)
Income – S. 2(24)	2(24	The assessee was the world satellite telecast right holder of certain feature films. In consideration for transfer of exclusive rights to transmit, broadcast, etc. of four feature films to Asianet for the period of five years, she was paid a sum of Rs. 4 lakhs. The Tribunal accepted the contention that she had transferred/sold her rights in the said pictures for a period of five years, which according to it, showed that the entire sum of Rs. 4 lacs was the consideration for the exercise of the rights by Asianet for a period of five years. Accordingly, the Tribunal accepted the contention of the assessee that the sum of Rs. 4 lakhs had to be assessed in five years and not in the year under appeal alone. Molly Boban vs. ITO, ITA No. 01/Coch./2007, Bench – N, A. Y. 2001-02, dt. 11-3-2008 - BCAJ p. 293, Vol. 40-A, Part 3, June 2008.
Income – S. 2(24) r.w.s. 48	2(24) r.w.s. 48	Incentive bonus received by the assessee on purchase and sale of units of mutual fund is to be reduced from the cost of purchase of the units. Such incentive received cannot be taxed as "Income from Other Sources". CIT vs. Shri V. S. Bhagat [(2007) 201 Taxation 251 (Del)].
Income – S. 4	4	Amount received and spent by the election agent of the assessee could not be treated as income in the hands of the assessee, as there was no evidence to show that amount was used by the assessee for only personal purpose of the assessee. CIT vs. Late Rajesh Pilot – (2008) 11 DTR 115 (Del) / (2008) 219 CTR 403 (Del).
Income – S. 4 & 56	4 & 56	Where the assessee's business had not commenced, the interest income earned on fixed deposits kept as margin money with the bank to obtain letter of credit (L.C.) facilities for import of capital goods is required to be credited against the pre incorporation expenses and cannot be taxed under the head Income from Other Sources. CIT vs. L.G. Electronics India (P) Ltd. (2008) 12 DTR 263 (Del.)
Income – TDR - S. 4	4	Transfer of TDR rights by individual members of assessee society, which was not owner of the land, to developer, against repairs of the building and construction of additional floor without receipt of any consideration by individual flat owners or the society and without

		allocating any area in the constructed portion did not give rise to any chargeable income or for that matter, capital gains. ITO vs. Lotia Court Co-op Housing Society Ltd. (2008) 12 DTR 396 (Mum.) (Trib.) / (2008) 118 TTJ 199 (Mum.)
Income - Waiver Of Loan – S. 2(24)	2(24)	Loan obtained and utilized for purchase of capital assets, hence, sum received by waiver of loan is capital receipt and not taxable. Fidelety Textiles P. Ltd vs. ACIT (2008) 305 ITR 97 (Chennai) (A.T) (TM)
Income deemed to accrue or arise in India – S. 9(1), (9)(1)(vii), 90	S. 9(1), (9)(1)(vii), 90	Assessee, UK firm having fulfilled the condition of presence in India for 90 days or more as provided in Art. 15 of DTAA between India and UK, fee received by it for legal services rendered to its clients in India is chargeable to tax under section 9(1)(vii) only to the extent referable to services rendered in India to the exclusion of services rendered from abroad. Clifford Chance vs. Dy. CIT (2009) 17 DTR 1 (Bom.) / (2009) 176 Taxman 458 (Bom.) / www.itatonline.org
Income from House Property – Annual value – S. 23(1)(b)	23(1)(b)	Expenditure on account of stamp duty and registration charges on lease deed, amount spent by the assessee towards stamp duty for drawing up the lease deed and the registration cannot be allowed to be deducted in determining the annual value u/s. 23(1)(b). CIT vs. Premnath Motors (Raj.) (P) Ltd. (2007) 212 CTR 16 (Raj.) / (2007) 297 ITD 83 (Raj) / (2007) 163 Taxman 383 (Raj)
Income from House Property – Annual Value – S. 22	22	Computation of annual value on basis of rent paid by other tenants in premises is not proper. Where fair rent not determined by Rent Controller A.O. to determine annual value and expected rent following guidelines under Rent Control Act. CIT vs. Shrimati Bhagwani Devi (2008) 298 ITR 413 (Jharkhand).
Income from House property - Arrears of rent-Income from Other sources – S. 22, 56	S. 22, 56	Arrears of rent on account of retrospective enhancement, in Hamilton's case it was laid down that retrospective increase of rent shall be the annual rent of the said past year or years but can not be said to be the annual rent of the year in which the said amount was received and can not be brought under income from other sources. On the other hand in Hope (India) case it was laid down that a mere claim for enhanced rent cannot amount to income receivable within the meaning of section 5, hence, there is no conflict between the decisions in hope (India) Ltd. vs. CIT (1999) 238 ITR 740 (Cal.) and Hamilton & Co. (P) Ltd. vs. CIT (1992) 194 ITR 391 (Cal.) P.G.& Sawoo (P) Ltd. & Anr. vs. ACIT (2008) 16 DTR 401 (Cal.) (FB) / (2009) 221 CTR 36 (Cal) (FB)
Income from House Property – Business income – Ss. 22, 28, 56	22, 27, 56	Income derived by assessee by mere letting out commercial complex is assessable under the head "Income from house property". Since the assessee is also providing certain ancillary services to the occupants against payment, AO is directed to consider the details of the services provided as well as the amounts received for the same, and to consider the said amounts under the head "Income from other sources" or "Business income". A.R. Complex vs. ITO (2007) 212 CTR 328 (Mad.)
Income from House Property – Deduction	24(1)(iv)	Interest on fresh loan raised to repay original loan taken for constructing / buying property is deductible u/s. 24(1)(iv) if the A.O. is satisfied that

– S. 24(1)(iv)		the second loan was obtained for the purpose of repayment of the original loan which was obtained for acquiring of the property. ITO vs. Karupa Chemicals P. Ltd. (2008) 298 ITR 189 (AT)(Mum).
Income from House Property – Plot rent – S. 22	22	Rental income in respect of plot in multi-storeyed building would be assessable under head 'Income from house property.' CIT vs. Sardar Man Singh (2007) 164 Taxman 434 (Delhi)
Income from House Property – S. 23(1)(b)	23(1)(b)	Notional Interest on Interest free deposit can not be added to actual rent received in determining the annual value u/s 23(1)(b). Madison Mercantile Ltd. vs. DCIT (2007) 164 Taxman 97 (Delhi).
Income from Other Source – S. 56	56	Where money borrowed for the purchase of plant and machinery was put in short-term deposits during the period of construction, interest received on such deposit was assessable under the head Income from Other Sources and cannot be set off against actual cost of plant and machinery. CIT vs. Winsome Dyeing & Processing Ltd. (2008) 10 DTR 207 (HP)
Income from Other Sources – S. 56	56	Interest earned on surplus funds during pre operative period was assessable u/s. 56. Dy. CIT vs. Capital Cars (P) Ltd. (2008) 113 TTJ 120 (Del.)
Income from Undisclosed source – Addition – Disclosure in the course of survey – Ss. 69, 133	69, 133	Addition on the basis of surrender during survey held to be not justified. CIT vs. Gianchand Bhajan Lal (2008) 3 DTR 269 (P&H).
Income from undisclosed source – Sales – S. 4, 143(3)	4	The entire sale proceeds cannot be regarded as profit or treated as undisclosed income of the assessee. On the contrary, it is the net profit rate which has to be adopted in such cases. Man Mohan Sadani vs. CIT (2008) 304 ITR 52 (MP).
Income from undisclosed sources – Addition – S. 69	4	Alleged understatement of sale consideration of shops, in the absence of any material on record to show that the actual consideration received by assessee for transfer of shops in question was more than what has been stated in the transfer deed, no addition could be made. CIT vs. Emerald Construction (P) Ltd. (2007) 212 CTR 20 (Raj.) / (2007) 281 ITR 59 (Raj).
Income from undisclosed sources – S. 69	69	In the absence of any material on record to show that there was any unexplained investment made by this assessee which was reflected by the unaccounted sales, no interference with the Tribunal's finding is called for and only the gross profit on the said amount can be brought to tax. CIT vs. Gurubachhan Singh J. Juneja (2008) 215 CTR (Guj) 509.
Income-tax Act, 1961, Mistake apparent on record – Rectification – S. 254(2)	254(2)	Omission to consider order of co-ordinate bench which was cited by the assessee, is mistake apparent rectifiable under section 2454(2). Paliwal Overseas Ltd. vs. Dy. CIT (2008) 117 TTJ 427 (Del.)
Industrial Under Taking - Deduction – Interest on Fixed Deposits - S. 80IB	S. 80IB	Interest derived by the assessee on fixed deposits kept as margin money with the bank could only held as business income and the assessee would be entitled to the inclusion of the same for the purpose of computing the deduction under section 80IB. Dy. CIT vs. Sudhir Genset Ltd. (2009) 17 DTR 496 (Del.) (Trib.)
Industrial Undertaking – Claim	80-	Restriction is placed on claiming repetitive deductions under the

u/s. 80-IA(9)	IA(9)	provisions of s. 80IA(9) and therefore, deduction u/s. 80-IA should be claimed from the profits and gains of the business before computing deduction u/s. 80HHC. CIT vs. Rogini Garments (2007) [108 ITD 49)/294 ITR 15 (AT) (Chennai)(SB)].
Industrial Undertaking – Deduction - S. 80-IA	80-IA	Reconstruction of business already in existence – Assessee having set up industrial undertaking with latest technology and increased capacity with fresh investments Rs. 104.85 lakhs as against investment of Rs. 20.86 lakhs in old plant and machinery which was less than 20 per cent of total investment. It could not be inferred that assessee's new unit was a result of reconstruction of old business, hence, entitled to deduction u/s. 80-IA. CIT vs. Mohan Foods Ltd. (2008) 216 CTR (Del) 148
Industrial Undertaking – Deduction – S. 80IA	80-IA	Assessee engaged in providing international connectivity services to the domestic telecommunication service providers by commissioning telecommunication earth stations. Providing satellite communications is not entitled to the deduction u/s. 80IA as the telecommunication services through earth station set up can not be characterized either with 'basis or cellular'. The earth station and satellite are supplementary to each other and it is entirely distinct and different from cable or cellular system. Videsh Sanchar Nigam Ltd. vs. CIT (2008) 299 ITR 234 (AT)(SB)(Mum).
Industrial Undertaking – Deduction – S. 80-IB	80-IB	- Duty drawback was part of the profit of the industrial undertaking for the purpose of deduction u/s 80-IB. - Part of the manufacturing activity was carried on by contract workers. The Assessee is entitled to full deduction and not on proportionate basis on the activity done by contract workers. Padhrod vs. ITO, ITA No. 4191/Mum/2004, Bench-A, A.Y. 2001-02, dt. 17-8-2007-BCAJ p. 30, Vol. 39-E, Part 1, October, 2007.
Industrial Undertaking – Duty draw back – S. 80IB	80-IB	Customs duty drawback is profit derived from business of industrial undertaking, hence, eligible for deduction under section 80IB. CIT vs. Eltek SGS (P) Ltd. (2008) 3 DTR 241 (Del.) / (2008) 300 ITR 6 (Del) / (2008) 215 CTR 279 (Del) / 2008 169 Taxman 283 (Del).
Industrial Undertaking - Duty Drawback - S. 80IB	80-IB	Deduction under section 80IB is not entitled in respect of duty draw back. Shakthi Footwear vs. ACIT (2008) 13 DTR 157 (Mad.)
Industrial Undertaking - Firm Converted Into Company - Part IX - S. 80IA(4)(1)	80-IA	Firm having been converted into company under Part IX of the Companies Act, and the assessee acquired all the assets and liabilities of the firm, assessee company fulfilled all the conditions laid down in section 80IA(4)(1) hence, entitled to deduction under section 80I. CIT vs. Chetak Enterprises (P) Ltd. (2008) 14 DTR 233 (Raj.) / (2008) 220 CTR 55 (Raj.)
Industrial Undertakings - Manufacture – S. 80I, 80HHA	80-I, 80HHA	Process of standardization and pasteurization does not amount to manufacture / production for purpose of claiming deduction under section 80I and 80HHA. B. G. Chitle vs. Dy. CIT (2008) 115 ITD 97 (Pune) (SB)
Infrastructure	80-IA	(i) In view of the provisions of sub-section (5) of section 80IA carried

Undertaking – Deduction – S. 80IA		forward losses and unabsorbed depreciation of the eligible unit have to be kept separate from the other units. (ii) Quantum of deduction u/s. 80IA can not exceed the gross total income defined u/s. 80B. (iii) Allocation of common head office expenses on the basis of the turnover of the units is a rational basis. Khinvasara Investment (P) Ltd. vs. Jt. CIT (2008) 110 ITD 198 (Pune).
Infrastructure Undertaking – S. 80-IA	80-IA	While calculating the deduction u/s 80-IA, if the profit does not include any part of interest income in excess of interest payment, then interest received need not be reduced from income for computing deduction u/s 80-IA. ITO vs. V. Naren Traders & Consultants (2008) 169 Taxman 36 (Mum.)
Infrastructure Undertakings – Road – S. 80IA(4)	80-IA	The assessee, who only engaged in developing the infrastructural facility i.e. road and not engaged in the operating and maintaining the said facility, was entitled to the benefits of the deduction under section 80IA(4). The provisions of sub–clause (c) of clause (1) of section 80IA(4) were in applicable to the instance case. ACIT vs. Bharat Udyog Ltd. (2008) 24 SOT 412 (Mum.)
Infrastructure Undertakings – S. 80-IA	80-IA	Fulfilment of conditions laid down in s. 80IA(3)(ii) r.w. Explanation 2 has to be examined as on date of commencement of actual production, and not as on date of trial production. Himachal Fine Blank Ltd. vs. DCIT (2007) 164 Taxman 129 (Chandigarh).
Initial assessment year – S. 80-IA	80-IA	Merely conducting a trial production, the assessee cannot be said to have been set up in the context of s. 80-IA so that it could defer its initial assessment year to the year of commercial production. Himachal Fine Blank Ltd. vs. DCIT (2007) 164 Taxman 129 (Chd.)
Interest – Refund – S. 234D	234D	Provisions of section 234D, i.e. brought on statute from 1-6-2003, are substantive and they cannot be applied retrospectively and therefore, it can not be applied to the earlier years even though the regular assessments for those years were framed after the date 1-6-2003 or refund was granted for those years after said date ITO vs. Ekta Promoters (P.) Ltd. [113 ITD 719 (DELHI)(SB)].
Interest – S. 201(1A)	201(1A)	Interest can be charged only up to the date of payment of tax by the payee. Mrs. Meena S. Patil vs. ACIT (2008) 113 TTJ 863 (Bang.)
Interest – S. 220	220	For the purpose of granting wavier of interest chargeable u/s. 220 of the Act, all the three conditions prescribed in clauses (i), (ii) and (iii) of section 220(2A) may not be cumulatively satisfied by the assessee. M.V. Amar Shetty vs. Chief CIT (2008) 12 DTR 98 (Karn.)
Interest – S. 234B	234B	The controversy before the Tribunal was when the tax payable by the assessee was enhanced in the reassessment proceedings, then whether the self-assessment tax paid by the assessee u/s. 140A was to be ignored for the purpose of computing the interest payable by the assessee u/s. 234B(3) of Act. According to the Tribunal, the reference to s. 234B(1) in s. 234B(3) was to be read with reference to s. 234B(2) of the Act, and applying the rule of harmonious construction on the facts of the present case, interest was to be charged up to the date on which the assessee had paid the tax u/s. 140A. In the present case, the income of the assessee

		was enhanced and due to the enhanced income, additional tax liability was also determined, but at the same time, it was seen that the assessee has paid the self-assessment tax u/s. 140A, which was more than even whatever tax was determined after reassessment. Hence self-assessment tax paid u/s. 140A cannot be ignored. The Fertilizers and Chemicals Travancore Ltd. vs. ACIT, ITA No. 1213/Coch./2004, Cochin Bench, A.Y 1996-97, dt. 24-4-2007, BCAJ p. 30, Vol. 39-E, Part 1, October, 2007.
Interest – S. 234B & C		In absence of any specific order by the Assessing Officer charging interest u/s. 243B & C of the Act, the charge of interest u/ss. 234B & C was held to be not tenable. V.N. Dubey vs. CIT (2008) 10 DTR 175 (MP).
Interest – S. 234B & C r.w.s. 115J	234B, 234C	While computing income under the provisions of section 115J of the Act, interest u/s. 234B and 234C of the Act is chargeable. CIT vs. United Vanaspati Ltd. – (2008) 11 DTR 231 (HP) / (2008) 218 CTR 524 (HP).
Interest – S. 234B r.w.s. 115J	234B	When income is computed u/s. 115J of the Act, interest u/s. 234B of the Act is not chargeable. Dy. CIT vs. Madhusudan Industries – (2008) 11 DTR 144 (Guj) / (2008) 218 CTR 493 (Guj).
Interest – S. 234D	234D	Section 234 D, inserted by taxation laws (amendment) Act, 2003, w.e.f. 1st June 2003, being substantive in nature, has no retrospective effect, hence applicable from asst year 2004-05, only ITO vs. Ekta Promoters (P.) Ltd. (2008) 10 DTR 563 (Delhi) (SB) / (2008) 113 ITD 719 (Delhi).
Interest – S. 36(1)(iii)	36(1)(iii)	Interest paid in respect of borrowings on capital assets not put to use in the concerned financial year is allowable deduction under section 36(1)(iii) as covered by DCIT vs. Core Health Care 215 CTR 1 (SC). CIT vs. Ishwar Bhuvan Hotels Ltd. 215 CTR 14 (SC)
Interest – S. 36(1)(iii)	36(1)(iii)	Section 36(1)(iii) is a code in itself and has to be read in its own terms. Prior to the insertion of the proviso by the Finance Act, 2003, section 36(1)(iii) made no distinction between moneys borrowed to acquire a capital asset or a revenue asset. All that the section required was that the assessee must borrow capital and the purpose of borrowing must be for the purpose of business carried on by the assessee in the year. Unlike in section 37 where an expenditure of capital nature is expressly excluded, there is no such restriction under section 36(1)(iii). Accordingly, the Supreme Court held that prior to the amendment; the assessee was entitled to the deduction in relation to moneys borrowed for the purpose of machinery even though the assessee had not used the machinery in the year of borrowing. DCIT vs. Core Health Care Limited (2008) 298 ITR 194 (SC), (2008) 215 CTR 1
Interest after asset is first put to use cannot be included in action cost – Not entitled to investment allowance – S. 43(1) and 32A	43(1), 32A	Interest paid by the assessee under deferred payment scheme for acquisition of machinery which is relatable to the period after the asset is first put to use should not be included in the actual cost of the asset under Explanation 8 to section 43(1) of the Act. Accordingly, investment allowance u/s. 32A of the Act was also not available to the assessee on such deferred interest.

		CIT vs. Tractors & Farm Equipment Ltd. [(2008) 202 Taxation 639 (Mad)].
Interest on Borrowed Capital – S. 36(1)(iii)	36(1)(iii)	Interest paid on borrowings were partly disallowed on ground that assessee had advanced interest free sum to sister concern. Held, that as advance was not in nature of loans, but as amounts was debited for day-to-day transactions, addition on account of disallowance of interest was deleted. Triveni Engg. & Industries Ltd. vs. DCIT (2007) 164 Taxman 125 (Delhi).
Interest on borrowed capital – S. 36(1)(iii)	36(1)(iii)	Proportionate interest can be disallowed where there is no business benefit by giving interest free loan to sister concern. Mahindra Holdings & Finance Ltd. vs. ITO (2008) 117 TTJ 721 (Mum.).
Interest on Borrowed Capital –Ss. 36(1)(iii), 37(1)	36(1)(iii), 37(1)	Interest on debentures and corporate borrowings, debentures and corporate borrowings cannot be treated as an asset or an advantage for the enduring benefit of the business of the assessee and therefore, interest on debentures and corporate borrowings is allowable as deduction. CIT vs. Lotte India Corporation Ltd. (2007) 212 CTR 543 (Mad.) / (2007) 290 ITR 248 (Mad).
Interest on refund – S. 214	214	The High Court following the decision of Apex Court in the case of Modi Industries Ltd. vs. CIT [(1995) 216 ITR 759 (SC) held that assessee was entitled to interest u/s. 214 of the Act from the prescribed date to the actual date on which refund of advance tax was ordered. CIT vs. P. K. Industries (2008) 6 DTR 37 (P&H) / (2008) 172 Taxman 79 (P&H).
Interest on Refund: From date of original assessment order – S. 132(4)(a) & S. 244A	132(4)(a) 244A	Where there is refund of excess amounts seized as a result of appellate order interest is payable from date of original assessment order – Assessee also entitled to compensation / damages in addition to interest. Ajay Gupta vs. CIT (2008) 297 ITR 125 (Del.) / (2007) 210 CTR 116 (Del) / (2007) 162 Taxman 296 (Del).
Interest- S. 234B	S. 234B	Assessee's entire income being subject to TDS, it was not liable to pay advance tax and hence, no interest under section 234B could be charged. Asstt. Director of Income-tax (International Taxation) vs. Chiron Behring Gmbh. & Co.(2009) 17 DTR 131 (Mum.) (Trib.)
Interest Tax		Bill discounting charges are chargeable interest under Interest Tax Act. Interest on inter corporate deposits is not interest on loan or advances and therefore would not be includible in chargeable interest under the Interest Tax Act. Gujarat Gas Financial Services Ltd. vs. ACIT (2008) 14 DTR 481 (Ahd.)(SB) / (2008) 119 TTJ 73 (Ahd.)(SB)
Interest Tax – Finance Lease – S. 2(5B) & 2(7)	S. 2(5B) & 2(7)	Transactions of assessee having already been held to be transactions in the nature of finance / loan transactions and such finding having attained finality. Interest earned by assessee from lease transactions is chargeable to interest tax. Maruti Countrywide Auto Financial Services Ltd vs. ITO (2009) 18 DTR 23 (Del.)(SB)(Trib.)
Interest Tax Act,	2(7)	Amount received by a financial institution, as additional amount from

1974 – S. 2(7)		borrowers towards payment of its Interest tax liability was not 'interest' within the meaning of section 2(7) of the Interest tax Act, 1974 and could not be treated a chargeable interest. CIT & Anr. vs. Canfin Homes Ltd. – (2008) 11 DTR 211 (Karn).
Interest Tax Act, 1974 – S. 2(7)	2(7)	Interest earned on Government securities by the assessee is not interest on loans and advances; accordingly the same is not liable to Interest Tax under the provisions of the Interest Tax Act 1974. CIT vs. The Bank of Rajasthan Ltd. (2008) 5 DTR 245 (Raj.)
Interpretation – "any other person" – Trustee Is not an employee hence amount paid cannot be disallowed – Rule 6D	Rule 6D	The true scope of the rule of ejusdem generis is that the words of general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified. When the particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to the things of the same kind as those specified. The phrase "any other person" in rule 6D(2) of the Income-tax Rules, 1962, would draw its colour from the preceding word, namely, "employee". Held accordingly, that a trustee was not an employee or not akin to an employee and the amounts paid to trustees by the trust could not be disallowed under rule 6D(2). CIT vs. Shivalik Drug (Family Trust) (2008) 300 ITR 339 (All.) / (2007) 214 CTR 450 (All).
Investment Allowance – S. 32A	32A	Assessee running Pathological Laboratory is entitled to investment allowance on expenditure incurred for pathological equipments. CIT vs. Suresh Amin Family Trust 2007 TLR 763 (Guj.)
Investment Allowance – S. 32A	32A	Construction of building, bridges or quarters does not amount to manufacturing or production of any article or thing and investment allowance u/s. 32A of the Act is not allowable to the company engaged in business of construction. CIT vs. Hans Builders Contractors Engineers (P) Ltd. [(2008) 202 Taxation 327 (Del)].
Investment Allowance – S. 32A	32A	The High Court endorsing the conclusion of the Tribunal held that the assessee has option to claim the investment allowance in the year of installation, where the machinery is put to use in the immediately succeeding year of its installation. CIT vs. Sukhijit Starch & Chemicals Ltd. [(2007) 201 Taxation 612 (P&H)]
Jurisdiction – Transfer of cases – S. 127	127	The power under section 127 to transfer cases would also apply to block assessment proceedings as well. The Supreme Court also referred to section 158BH which categorically states that all the other provisions of the Act shall apply to assessment made under the said Chapter. K. P. Mohammed Salim vs. CIT (2008) 216 CTR 97 (SC); 300 ITR 302 (SC).
Kar Vivad Samadhan Scheme – Finance Act, 1998, S. 95(i)(c)	95(i)(c)	For the purpose of admissibility of a declaration under the KVSS, it is enough that an appeal is pending, even if it is irregular or incomplete. Better Label Manufacturing Co. Ltd. vs. Commissioner of Customs – (2008) 11 DTR 338 (Mad).
Kar Vivad Samadhan Scheme, 1998 – Reassessment		Once amount is paid under KVS Scheme and certificate obtained, assessment can not be reopened. A. Ramamurthy vs. ITO (2008) 305 ITR 260 (Mad.) / (2008) 6 DTR 104

		(Mad)..
Lease rights amount to transfer – S. 2(14)	2(14)	The assessee has taken a building on 99-year lease from her husband executed a sub-lease against receipt of lump sum consideration as advance adjustable against future lease rentals for 97 years. The Court held that lease rights of the assessee in property constitute a capital asset and more so since such rights were held for less than 36 months the assessee was liable to pay short-term capital gains tax. G. Seetha Kamraji vs. CIT (2007) 165 Taxman 117 (AP)
Limitation – S. 153(2)	153(2)	Time limit of two years for completion of assessment is applicable under provision to sec. 153(2) as amended w.e.f. 1-6-2001, only in cases where notice u/s. 148 was served on or after 1-4-1999 but before 1-4-2000. CIT vs. Smt. Anchi Devi (2008) 218 CTR 16 (P&H) / (2008) 5 DTR 311 (P&H).
Local Authority – S. 10(20)	10(20)	The Supreme Court held that the appellant which is an agricultural marketing committee established under the Delhi Agricultural Produce Marketing (Regulation) Act, 1998, to provide facilities for marketing agricultural produce and for performing other functions such as superintendence and direction and control of market, etc. was not a local authority under section 10(20) of the Act, as amended by the Finance Act, 2002. Agrl. Produce Market Committee, Narela vs. CIT (2008) 305 ITR 1 (SC).
Loss – Derivative Transactions - S. 43(5)	43(5)	Loss claimed by assessee in derivative transaction is allowable as a business loss as the same is not covered by section 43(5). Clause (d) inserted in proviso to sub-section (5) of 43 by the Finance Act, 2005 w.e.f. 1st April 2006, is retrospective in application. P.S. Kapur vs. ACIT (2008) 15 DTR 181 (JP) (Trib) Editorial Note: Reference can be made to following judgments. DCIT vs. SSKI Investors Services (P) Ltd. (2008) 113 TTJ 511 / 1 DTR 272 (Mum) R.B.K. Securities (P) Ltd. vs. ITO (2008) 118 TTJ 465 / 13 DTR 255 (Mum)
Loss – Speculative – Derivative - S. 28(1), 43(5)	28(1), 43(5)	Dealings in the derivative is a separate kind of transaction which does not involve any purchase and sale of shares and therefore loss on account of F & O transactions cannot be treated as, speculative loss. R. B. K. Securities (P) Ltd. vs. ITO (2008) 13 DTR 255 (Mum.) (Trib.)
Losses – Speculation Business – S. 73	73	Provisions of Explanation to section 73 apply only where any part of business consists in purchase and sale of shares and not purchase alone. Interest paid on purchase of shares from bank finance which were carried forward as stock, cannot be disallowed by invoking Explanation to Section 73, as a loss arising to assessee in speculation business. Pioneer Equity Trade (India) Pvt. Ltd. vs. ITO (2008) 168 Taxman 76 (Mumbai).
Manufacture - Industrial Undertakings - Ship Breaking Activity – S. 80HH, 80I	80HH, 80-I	Ship breaking activity results in production of a distinct and different article and therefore assessee doing said activity would be entitled to deduction under sections 80HH and 80I. Vijay Ship Breaking Corpn. vs. CIT (2008) 175 Taxman 77 (SC)

Manufacture - New Industrial Undertakings – S. 80I, 80HHA	80-I, 80HH	Process of standardization and pasteurization of milk does not amount to manufacture / production for purpose of claiming deduction under section 80I and 80HHA. B. G. Chitale vs. Dy. CIT (2008) 115 ITD 97 (Pune)(SB)
Manufacture - Ship Breaking Activity – S. 80HH, 80I	80HH, 80-I	Ship breaking activity results in production of distinct and different article and therefore, assessee doing said activity would be entitled to deduction under section 80HH and 80I. Vijay Ship Breaking Corp vs. CIT (2008) 175 Taxman 77 (SC)
Manufacture - Software Duplication – S. 80IA	80-IA	Software duplication tanatamounts to manufacture hence, eligible for deduction under section 80 IA. Oracle India (P) Ltd. vs. Dy. CIT (2008) 13 DTR 371 (Del.) (Trib.)
Manufacture – Twisting And Texturising Of Partially Oriented yarn – S. 80IA	80-IA	Twisting and texturising of Partially Oriented Yarn (POY) amounts to manufacturing or production of an article or thing distinct from commodity involved in manufacture and, therefore, entitled for deduction under section 80IA. CIT vs. Emptee Poly – Yarn (P) Ltd. (2008) 170 Taxman 332 (Bom.) / (2008) 305 ITR 309 (Bom) / (2008) 218 CTR 657 (Bom).
Manufacture – Construction of flats – S. 80J	80J	Activity of construction of flats and shops is not a manufacture or production of article or thing and not eligible for deduction u/s. 80J of the Act. CIT vs. Raja Towers P. Ltd. (2008) 9 DTR 166 (Del.)
Manufacture Or Production - Investment Deposit Account – S. 32AB, 80HH, 80-I	32AB, 80HH, 80-I	Conversion of jumbo rolls of photographic films in to small flats and rolls in desired size amounts to manufacture or production eligible for deduction under section 32AB. India Cine Agencies vs. CIT (2008) 15 DTR 121 (SC) / (2008) 220 CTR 223 (SC)
Manufacturer – Deduction – S. 80-IB	80-IB	Assessee engaged in purchasing rectified sprit and then blending and bottling it into Indian Made Foreign Liquor (IMFL) is said to be engaged in manufacturing for the purpose of claiming deduction u/s. 80-IB of the Act. CIT vs. Vinbros & Co. (2008) 6 DTR 25 (Mad.) / (2008) 218 CTR 364 (Mad).
MAT profit – S. 115J	115J	ITO has no jurisdiction to rework the book profit under section 115J by substitution the rate of depreciation prescribed in Schedule XIV of the Companies Act, 1956, for the rates which have been constantly applied by the assessee. Malayala Manorama Co. Ltd. vs. CIT (2008) 216 CTR 102 / (2008) 300 ITR 251.
Method of Accounting – S. 145	145	Addition made by rejecting book results, and by estimating shortfall in yield, without any findings or pointing out any defect in the books of account or in the method of accounting followed is unjustified. Puneet Udyog vs. ACIT (2007) 164 Taxman 167 (Delhi).
Method of Accounting – S. 145 r.w.s. 32	145 rws 32	Where the Assessing Officer adopted net profit rate and estimated the income of the assessee, deprecation was still allowable. Shri Ram Jhanwar Lal vs. I.T.O. & Ors. (2008) 10 DTR 229 (Raj.)
Mistake Apparent on record – Appeal to ITAT – S. 254	254	ITAT failed to consider one of the grounds raised by the assessee in her Appeal Memo. ITAT re-heard the appeal without giving an opportunity to be heard.

		On appeal to High Court, it was held that the ITAT at the stage of deciding the Misc. Application itself could not be regarded as a correct approach. The assessee should have been given an opportunity to present her case further in respect of the third issue which had been left out for consideration in the original order passed by the ITAT by giving due opportunity. Therefore, the order was not valid and matter was remanded back. T. Jayabharathy vs. ACIT (2007) 294 ITR 128 (Madras)
Mutuality – Income – S. 4	4	Interest earned on the fixed deposit by a Company formed for the benefit of certain section of shopkeepers, was held to be not exempt from tax on the principle of mutuality as the memorandum and article of association of the Company permitted it to do various businesses, which involved commercial activities. Devi Ahilya New Cloth Market Co. Ltd. vs. CIT (2008) 12 DTR 33 (MP)
Natural Justice – Principles of Natural Justice		The Supreme Court held that even an administrative order or decision in matter involving civil consequence has to be made consistently with the rules of natural justice, unless the statute conferring the power excludes its application by express language. Therefore, assessee would have to be given a reasonable opportunity of being heard before passing an order for special audit under section 142(2A). Sahara India (Firm) vs. CIT (2008) 300 ITR 403 (SC) / (2008) 7 DTR 627 (SC).
New Industrial Undertaking – Ss. 80HH, 80-J	80HH, 80J	Allowability claims made through Revised Return which had not been claimed in original return – Filing of Audit Report not necessary with the return itself and the claim for deduction is permissible even if Audit Report is filed at a later stage. CIT vs. Jagish Ram Krishan Chand (2008) 214 CTR (HP) 327 / (2008) 304 ITR 45 (HP).
No Deduction To Non Resident – Not Discriminatory – S. 80HHE	80HHE	Automated Securities vs. ITO (itatonline.org)
Non-Compete Fees – Salary – S. 4, 17(3)(i) & 17(3)(iii).	4, 17(3)(i), 17(3)(iii)	Payment received by the assessee from his former employer as compensation for his agreement not to take up any competitive employment / assignment in future cannot be termed as "profit in lieu of salary" and is not taxable. CIT vs. Shyam Sunder Chhaparia (2008) 14 DTR 309 (MP)
Non-est return – S. 139	139	Return filed with Assessing Officer having no jurisdiction over assessee on date of filing of the Return, could not be treated as valid, and same can not be acted upon by Assessing Officer nor he can frame assessment thereupon. Paint Trade Linkers vs. ACIT (2008) 171 Taxman 31 (Lucknow).
Non-service of Notice – S. 143(2)	143(2)	Notice u/s. 143(2) sent to the assessee by registered post having been received back undelivered without acknowledgement due, there was no service of notice upon the assessee within the prescribed period and consequently the assessment made by the AO is invalid. CIT vs. Eqbal Singh Sindhana (2007) 212 CTR 341 (Del.) / (2008) 304 ITR 177 (Del).

Notice - Assessment – S. 143(2), 292BB	S. 143(2), 292BB	Section 292BB makes no reference to any date before or after which the notice should have been issued or served to attract the applicability of that section and therefore, legal fiction created by section 292BB would govern all cases irrespective of whether the notices were issued / served or after 1st April 2008, and whether the assessee has participated in any proceedings or co-operated in any preceding or succeeding assessment year. ITO vs. Varia Pratik Engineering (2009) 17 DTR 1 (Ahd.) (Trib.) / (2009) 120 TTJ 1 (Ahd.) Editorial Note:- Special Bench Delhi has taken contrary view. Kuber Tobacco Products (P) Ltd. www.itatonline.org
Notice – Assessment – S. 143(2), 292BB	S. 143(2), 292BB	Section 292BB inserted by the Finance Act, 2008, w.e.f. 1st April, 2008 has no retrospective operation and applies to and from Asst year 2008-09 only, therefore, assessee could challenge the validity of block assessment in appellate proceedings on the ground of non issuance of notice under section 143(2) for the block period 1st April 1988 to 25th Jan., 1999. Kuber Tobocco Products (P) Ltd. vs. Dy. CIT (2009) 18 DTR 1 (Del.) (SB) (Trib.) / www.itatonline.org
Notice – Assessment – Ss. 143, 282	143, 282	Notice under section 143(2) was sent by registered post, which was received back undelivered. The notice ought to have been sent along with acknowledgment due. Hence, no notice under section 143(2) of the Act had been served upon the assessee within prescribed period, and therefore the assessment was invalid. CIT vs. Eqbal Singh Sindhana (2008) 304 ITR 177 (Delhi)
Notice – Service – S. 148, 282(1)(a)	148, 282(1)(a)	Report of Inspector who allegedly served the notice under section 148, being undated and the lady on whom the notice was served not having been identified by Inspector, there was no valid service of notice on the assessee as per provisions of section 282 and order 5 Rule 18 CPC, hence, CIT (A) was justified in annulling the assessment. ITO vs. Bedi Enterprises (2008) 3 DTR 112 (Luck.)
Notice after expiry of four years – Original assessment – Ss. 143(3), 147	143(3), 147	Original assessment having been made u/s. 143(3), reassessment based on the same material after four years from the end of the relevant assessment year was barred by proviso to s. 147, there being no failure on the part of assessee to make full and disclosure. CIT vs. Tamil Nadu Transport Development Finance Corporation Ltd. (2007) 212 CTR 53 (Mad.)
Notice of expiry of four years – Reopening of assessment – Ss. 143(3), 147	143(3), 147	Reopening of assessment made u/s. 143(3) after expiry of four years from the end of relevant assessment year was barred by proviso to s. 147 in the absence of any finding by AO that there was failure on the part of assessee to disclose fully and truly all material facts. CIT vs. A.V. Thomas Exports Ltd. (2007) 212 CTR 164 (Mad.) / (2008) 296 ITR 603 (Mad).
Partnership Firm – Ss. 40(b) & 145	40(b), 145	Where book results of the assessee are rejected and profit is estimated by applying a flat rate of profit, salary and interest to the partners of the assessee firm are to be allowed separately in terms of the partnership deed even though the assessee was following cash system of accounting and amounts of salary and interest were not actually paid to the partners. CIT vs. Supreme Builders (2008) 7 DTR 174 (P&H) / (2008) 303 ITR 1

		(P&H).
Partnership Firm – Remuneration to be allowed out of the additional income declared in survey – S. 40(b)	40(b)	Where the additional income declared during the course of survey action was found to be business income of the firm, the remuneration to the partners has to be allowed out of the additional income also. CIT vs. S. K. Srigin & Bros. (2008) 171 Taxman 264 (Kar).
Penalty – Certificate – S. 272A(2)(g)	272A(2)(g)	When there is compliance of section 203 of the act read with the relevant rules, penalty u/s. 272A(2)(g) of the Act cannot be imposed even though there is delay in payment of TDS amount by the assessee. CIT vs. Ashapura Garments P. Ltd. (2008) 9 DTR 300 (Bom.) / (2008) 219 CTR 195 (Bom).
Penalty – Concealment – Disclosure – Explanation 5 – S. 132(4), 271(1)(c)(5)	132(4), 271(1)(c)	Immunity under Explanation 5 of section 271(1)(c), is not taken away for the reason that income disclosed by assessee in his statement under section 132(4) for a particular year was spread over in the returns of several years, more so, when AO had also made assessment as per the returns filed by assessee, though after making some quantum reshuffling. CIT vs. Kanhaiyalal (2008) 2 DTR 10 (Raj.) / (2008) 299 ITR 19 (Raj).
Penalty – Concealment – Disclosure – Manner of Income – Explanation – Ss. 132(4), 271(1)(c)(5)	132(4), 271(a)(c)(5)	Assessee having declared the value of diamonds in his statement, and paid tax thereon, entitled to immunity from penalty, even though the statement did not specify the manner in which the income representing value of diamonds was derived. CIT vs. Mahendra C. Shah (2008) 3 DTR 1 (Guj.) / (2008) 299 ITR 305 (Guj) / (2008) 215 CTR 493 (Guj).
Penalty – Concealment - Legal Advice – S. 271(1)(C)	271(1)(c)	The assessee made a claim for exemption on the basis of legal advice from his counsel. The court held that assessee could not be made to suffer for the wrong claim made on the advice of his counsel, more so when he had made full disclosure of income subject to exemption in the return of income. CIT vs. Amar Nath (2008) 173 Taxmann 395 (P & H)
Penalty – Concealment - Legal Representatives – S. 18(1)(a), 18(1)(c), 19	18(1)(a)	In order to make legal representative of deceased assessee liable for penalty under section 19(1), it is not enough that penalty proceedings should be initiated during life time of deceased, but it is also necessary that such penalty proceedings must result in to penalty orders during his life time. ACIT vs. F. P. Gaekwad (2008) 174 Taxman 551 (Guj)
Penalty – Concealment – Recording of Satisfaction – S. 271(1)(c)	271(1)(c)	Assessing Officer merely mentioning towards the end of the assessment order that "Penalty notice under section 271(1)(c) is issued" does not amount to recording of valid satisfaction, hence, penalty imposed under section 271(1)(c) was invalid and without jurisdiction. Vikram Chadha vs. ITO (2008) 4 DTR 435 (Asr).
Penalty – Concealment - Revised Return - S. 271(1)(c)	S. 271(1)(c)	On the basis of information received the A.O. issued notice under section 148, the assessee filed the revised return surrendering the capital gains as income to buy peace and avoid litigation. Return was accepted. The Court held that levy of penalty under section 271(1)(c) of the act was not valid.

		CIT vs. Rajiv Garg (2008) 175 Taxman 184 (P & H)
Penalty – Concealment – Revised Return – Detection – S. 271(1)(c)	271(1)(c)	Assessee having filed revised returns surrendering the amounts reflected in various bank accounts in the names of family members as his own income before completion of process of detection of concealed income, penalty under section 271(1)(c) was not leviable. CIT vs. Shankerlal Nebhumal Uttamchandni (2008) 4 DTR 238 (Guj.)
Penalty – Concealment – S. 153A, 271(1)(C) Expln. 5	153A, 271(1)(c)	Section 153A is a specific for making assessment or reassessment in the course of search under section 132 has been initiated. The section is materially different from section 147 in respect of this regard only. If the assessee has already filed a return under section 139 or in response to notice under section 148 and he is served with the a notice under section 153A, then there can be a case of concealment, if the assessment is made in pursuance to return filed under section 153 A. It is noticed that there was concealment in the earlier return. Penalty under section 271(1)(c) can be levied in an assessment under section 153A. Assessee having admitted undisclosed income representing bogus gifts recorded in the books in his statement under section 132(4) during search, declared the same in return under section 153A and paid taxes thereon, was eligible for immunity from penalty under section 271(1)(c) Expln. 5, thereof, however, as regards declaration of commission for purchasing bogus gifts which was an outgoing not representing any asset, such immunity was not available. Dy. CIT vs. S. Kumar & Ors. (2008) 15 DTR 34 (Bang.)(Trib) Editorial Note: First judgement on section 153A read with section 271(1)(c)
Penalty – Concealment – S. 271(1)(c)	271(1)(c)	Concealment penalty u/s 271(1)(c) was levied on ground of claiming excessive deductions u/s 80I and 80IA. Held, as all facts relating to claim u/s 80IA was furnished in Return and in accounts submitted with Return, there was no attempt on part of Assessee to conceal its income, and hence no penalty u/s 271(1)(c). As regards claim of deduction u/s 80I, since at time of filing of Return legal position was not settled and issue was quite debatable, it was held that assessee could not be said to have concealed its income. ACIT vs. Carrier Aircon Ltd. (2008) 172 Taxman 173 (Delhi).
Penalty – Concealment – S. 271(1)(c)	271(1)(c)	Gift received by an Assessee from a non-resident through a cheque from NRE A/c was treated as Income of the Assessee. In Appeal before CIT(A), the addition became final, as assessee did not press his appeal. Penalty levied u/s 271(1)(c) was deleted in absence of evidence or proof that the money belonged to the assessee, and that the compensatory payment had flowed from the assessee to the donor. Further, held that mere surrender of amount as Income do not mean that amount of Gift was income of the Assessee. ACIT vs. Vishan Narayan Khanna (2008) 171 Taxman 136 (Delhi)
Penalty – Concealment – S. 271(1)(c)	271(1)(c)	No penalty u/s. 271(1)(c) of the Act can be levied on the assessee on the ground that the assessee failed to produce the depositors after a lapse of 17 years from the date of loan received by the assessee. The High Court

		also held that the Tribunal was not justified in confirming the levy of penalty on the addition made u/s. 68 of the Act, merely on the statement given by the depositors in some other proceeding without allowing the assessee to cross-examine the depositors. Shree Nirmal Commercial Ltd. vs. CIT – (2008) 11 DTR 255 (Bom)
Penalty – Concealment – S. 271(1)(c)	271(1)(c)	Order levying penalty without specific mention as to whether assessee had concealed particulars of income or furnished inaccurate particulars thereof, was held to be invalid, inspite of fact that Assessing Officer had validly initiated penalty proceedings for furnishing inaccurate particulars of Income. Poonam Industries vs. ITO (2008) 172 Taxman 87 (Amritsar).
Penalty – Concealment – S. 271(1)(c)	271(1)(c)	Penalty u/s. 271(1)(c) was not leviable where the assessee claimed deduction u/s. 80IB of the Act by making a mistake in calculation of number of years, as in such a case it cannot be said that the assessee deliberately concealed or furnished inaccurate particulars of his income. CIT vs. Himachal Agro Foods Ltd. (2008) 9 DTR 46 (P&H)
Penalty – Concealment – S. 271(1)(C) – Loss - Explanation 4	271(1)(c)	Explanation 4 is retrospective in nature and applicable retrospectively. When final assessed income is also loss penalty under section 271(1)(c) can be levid. CIT vs. Gold Coin Health Food (P.) Ltd. (2008) 11 DTR 185 (SC).
Penalty – Concealment – Satisfaction – S. 271(1)(c)	S. 271(1)(c)	Power to impose penalty under section 271(c) depends upon satisfaction of Assessing Officer in course of assessment proceedings and it cannot be exercised if he is not satisfied in Clause (a), (b) and (c) of sub section – (1) of section 271 before proceedings concluded. Such a satisfaction must be spelt out from order of Assessing Officer as to concealment of income or deliberately furnishing of inaccurate particulars and in absence of a clear finding as to concealment of income or deliberately furnishing of inaccurate particulars, initiation of penalty proceeding under section 271(1)(c) would be without jurisdiction. CIT vs. Rampur Engg. Co. Ltd. (2009) 176 TAXMAN 211 (Delhi) (FB) / (2009) 221 CTR 32 (Del) (FB) Editorial:– See CIT vs. Indus Valley Promoters Ltd. (2008) 307 ITR 142 (Delhi)
Penalty – Concealment - Satisfaction recorded by Assessing officer for initiation of penalty proceedings – S. 271(1)(c)	S. 271(1)(c)	Department's special leave against Delhi High Court in Tax Appeal No. 807 of 2007 dt. 17-9-2007 where by the High Court dismissed the Department's appeal holding that the satisfaction had not been recorded. In the assessment order for initiation of penalty proceedings. CIT vs. Mayur AIR Products (P) Ltd. SLP. No. 17635 of 2008 dt. 14-7-2008 (2008) 307 ITR (St.) 1 (SC)
Penalty – Concealment - Satisfaction recorded by Assessing officer for initiation of penalty proceedings – S. 271(1)(c)	S. 271(1)(c)	Department's special leave petition against the judgment dt. 17-9-2007 of Delhi High Court in ITA NO 1596 of 2006, where by the High Court deleted the penalty imposed by the Assessing Officer under section 271(1)(c) of the Income-tax Act on the ground that no satisfaction was recorded by the assessing officer in the assessment order. CIT vs. Surender Kumar Soni C.C. No. 13514 of 2008 dt. 3-10-2008 (2008) 307 ITR (St) 1 (SC)
Penalty – Concealment of	271(1)(	Assessing Officer imposed penalty under section 271(1)(c) on assessee

Income – Recording of satisfaction – S. 271(1)(c)	c)	on ground that in its profit and loss account, assessee had not reflected excess stock though assessee had placed certain documents before Assessing Officer which explained discrepancy in value of closing stock to some extent. Mere mention of discrepancy in figures in assessment order, which had some bona fide explanation, did not meet requirement of recording by Assessing Officer of his satisfaction that penalty proceedings must be initiated. Therefore, in absence of express words to that effect, no such satisfaction was even discernible from assessment order and, hence, penalty proceedings initiated against assessee could not be sustained. CIT vs. National Marble & Sanitary (2008) 169 Taxman 32 (Delhi).
Penalty – Concealment of income – S. 271(1)(c)	271(1)(c)	Assessee a co-operative society engaged in manufacture of sugar claimed deduction u/s. 80P of the Act on the basis of various decision of High Courts, its claim was held to be a bonafide claim by the assessee and penalty u/s. 271(1)(c) of the Act was not leviable in such case. CIT vs. Budhewal Co-operative Sugar Mills Ltd. (2008) 6 DTR 31 (P&H) / (2007) 175 ITR 280 (P&H).
Penalty – Concealment of income – S. 271(1)(c)	271(1)(c)	Bogus claim for depreciation on non-existing assets. However withdrawal of claim in revised return after search. It was held that levy of penalty was justified. Where the assessee's explanation was not found to be false, even though the assessee could not substantiate his explanation in respect of the additions made by the Assessing Officer and the same were confirmed by the Appellate Authority. The High Court held that the case of the assessee was not covered by Explanation 1(A) to section 271(1)(c) of the Act as the Explanation offered by the assessee was not found as lacking bonafide, as all the relevant facts with respect to the additions were already disclosed by the assessee. CIT vs. Ram Prakash (2008) 6 DTR 295 (All)
Penalty – Concealment of income – S. 271(1)(c)	271(1)(c)	Where assessee had furnished particulars of her income in Part IV of return, there was no concealment and penalty could not be levied under section 271(1)(c). CIT vs. Mrs. Roshan D. Nariman (2008) 169 Taxman 1 (Bom.)
Penalty – Initiation – S. 271E R.W.SS. 269T AND 275(1)(c)	271E	Penalty proceedings under section 271E need not be initiated during course of assessment proceedings. ACIT vs. Vinman Finance & Leasing Ltd. (2008) 115 ITD 115 (VISK.) (TM)
Penalty – Loan or Deposit – S. 271D	271D	No penalty u/s. 271D r.w.s. 269SS if the Assessee has accepted cash loans of Rs. 20,000/- from each person. CIT vs. Madhukar B. Pawar (2008) 218 CTR 59 (Bom.) / (2008) 10 DTR 129 (Bom).
Penalty – Loss to loss – S. 271(1)(c)	271(1)(c)	The Supreme Court overruled its earlier judgment of (2007) Virtual Soft System Ltd. vs. CIT (2007) 289 ITR 83 (SC). It held that Explanation 4 to section 271(1)(c)(iii) is clarificatory and not substantive and therefore would apply even to assessment year prior to April 1, 2003. It further held that what the Finance Act, 2002, intended was to make the position explicit which otherwise was implicit. CIT vs. Gold Coin Health Food P. Ltd. (2008) 304 ITR 308 (SC) (2008) 11 DTR 185 (SC).

Penalty – Question of law – S. 18(1)(c)	18(1)(c)	Whether penalty under section 18(1)(c) could be cancelled on the ground that the assessee was entitled to the benefit under the amnesty scheme, particularly when the assessee had revised its return several times subsequent to the search operation is a substantial question of law. CIT vs. Taktawala (2008) 215 CTR 399 (SC) / (2008) 4 DTR 187 (SC).
Penalty – Revised return to buy peace – Penalty deleted – S. 271(1)(c)	271(1)(c)	The declaration of income made by the assessee-company in the revised return and the explanation that it had done so to buy peace with the Department and to avoid protracted litigation was accepted by the Assessing Officer. The assessment was completed accepting the net income returned in the revised return of income. Not only did the assessment order not reflect any satisfaction as required under section 271(1) of the Act but even the show cause notice dated September 17, 2001, was silent with reference to the satisfaction arrived at by the Assessing Officer as to the concealment of income by the assessee-company. Nothing had been placed before the court by the Revenue to show that any other material was available with the Assessing Officer to the effect that the assessee had concealed its income. Hence, it was held that penalty could not be imposed. V.V. Projects and Investments P. Ltd. vs. Dy. CIT (2008) 300 ITR 40 (AP.)
Penalty – S. 221	221	Held, that penalty u/s 221 is not attracted in respect of delay in payment of Interest, when assessee had made payment of entire taxes raised as per demand created u/s 143(1). ACIT vs. Avdesh Kumar Parvinder S. Kochar (2008) 173 Taxman 91 (Delhi).
Penalty – S. 271(1)(c)	271(1)(c)	Interest on FDR declared on receipt basis was enhanced by A.O., at figure as disclosed in TDS certificate. Penalty imposed on account of said addition was deleted on ground that nothing was concealed, and full particulars of income were disclosed with Return by way of TDS certificate. ITO vs. Purushottam Das Chopra (2008) 167 Taxman 86 (Delhi).
Penalty – S. 271(1)(c)	271(1)(c)	The requisite satisfaction if not derived or recorded by A.O. during the course of original assessment proceedings, regarding concealment or furnishing inaccurate particulars, then the initiation of penalty is bad in law and consequently penalty imposed is liable to be cancelled. British Airways plc vs. DDIT (2008) 166 Taxman 126 (Delhi)
Penalty – S. 271B	271B	The assessee was a chartered accountant by profession. During the year, he received share of profit and remuneration from the partnership firm, each of which was more than Rs. 10 lakhs. However, the gross receipts earned by his proprietary concern were less than Rs. 10 lakhs. According to the A.O, the provisions of section 44AB were applicable and levied penalty u/s 271B. The Tribunal noted that assessee’s major income was not from profession, but from the share of his profit from the professional firm. According to it, share of profit cannot be equated with income from profession. The Tribunal held that the assessee had reasonable cause for failure to get his accounts audited as required u/s. 44AB of the Act, hence penalty was deleted. Hitesh D. Gajaria vs. ACIT, ITA Nos. 992/ Mum/2007, Bench – K, A.Y. 2003-04, dt. 22-2-2008 - BCAJ p. 16, Vol. 40-A, Part 1, April 2008.

Penalty – S. 271G	271G	Satisfaction need not be recorded before initiating proceedings u/s 271G as provisions of said section are quite different from provisions of sec 271(1). Cargill India (P) Ltd. ITO vs. DCIT (2008) 167 Taxman 114 (Delhi).
Penalty – S. 272A(2)(g)	272A(2)(g)	Where the business activities of the assessee were hampered due to losses incurred year after year, labour unrests and there was no experienced staff left with the assessee company to look after the affairs of the company, the High Court held that in such circumstances the assessee was prevented by reasonable and sufficient cause from issuing T.D.S. certificate within stipulated time and the penalty was not leviable in such case. General Engineering Works vs. CIT (TDS) [(2008) 202 Taxation 488 (Del)].
Penalty Concealment - Income assessed on estimate basis – S. 271(1)(c)	S. 271(1)(c)	Apex Court dismissed the special leave petition of the department against the order of Punjab and Haryana High Court in ITA NO 470 of 2007 (2008) 303 ITR 53, where by the High Court dismissed the from the order of Tribunal canceling the penalty following 254 ITR 191 and 158 ITR 85 in which the Court had held that provisions of section 271(1)(c) are not attracted when the income of the assessee is assessed on estimate basis and additions are made thereon. CIT vs. Sangrur Vanaspati Mills Ltd. SLP No. 31541 of 2008 dt. 19-12-2008 (2009) 308 ITR (St.) 18 (SC)
Penalty Concealment – Mens Rea - S. 271(1)(c)	271(1)(c)	Mens rea is not an essential ingredient of section 271(1)(c), and there is no discretion with the authority competent to impose penalty below the prescribed minimum. UOI vs. Dharamendra Textile Processors & Ors. (2008) 14 DTR 114 (SC) / (2008) 174 Taxmann 571 (SC) Editorial Note: Full Bench of Three Judges
Penalty Concealment – Mens rea – S. 271(1)(c)	271(1)(c)	The question whether s. 11AC of the Central Excise Act, 1944, which was inserted with the intention of providing mandatory penalty on the person who evades payment of tax, should be read to contain mens rea as an essential requirement, is referred to a larger bench in view of conflict of view between the judgments of Dilip N. Shroff vs. JCIT 291 ITR 519 and Chairman, SEBI vs. Shriram Mutual Fund 131 Comp Cas 591. UOI & Others vs. Dharmendra Textile Processors [2007] 295 ITR 244 (SC), 212 CTR 432
Perquisite – S. 10(10CC)	10(10CC)	Taxes paid by the employer can be added only once in the salary of the employee, thereafter tax on such perquisite is not to be added again. RBF Rig Corpn. LIC (RBFRC) vs. ACIT (2007) 165 Taxman 101 (Delhi) (SB).
Perquisites – Employees stock option – S. 17(ii)	17(ii)	Under the scheme warrants were issued to the employees and the employees had to retain the warrant for a minimum of 12 months and then the shares were allotted for a consideration which was again subject to the lock in period during which it was held in the trust only. The Supreme Court held that the issue of warrant was mere a right without

		an obligation to buy and therefore "perquisite" could not be said to have accrued at the time when warrants were granted. And as the shares were having a lock in period the benefit which arose on the date when the option stood exercised was only a notional benefit whose value was unascertainable and therefore not taxable. The Supreme Court further held that sub clause (iiia) of section 17(2) which was inserted w.e.f. April 1, 2000, was prospective and could not be held to be retrospective. CIT vs. Infosys Technology Ltd. (2008) 297 ITR 167 (SC), (2008) 214 CTR 293, (2008) 168 Taxman 204
Power of Tribunal – S. 254	254	Tribunal can entertain the claim for exemption or non-taxability of particular income. Kisan Discretionary Family Trust vs. ACIT (2008) 113 TTJ 918 (Ahd.)
Powers of CIT(A) for enhancement – S. 251(2)	251(2)	Section 251(2) only requires to offer a reasonable opportunity to call for an explanation from an assessee for proposed action of enhancement and it has not prescribed any statutory notice under the Act for issuing a show-cause notice for enhancement of income. Honda Siel Cars India Ltd. vs. Asstt. CIT [109 ITD 1 (Delhi)].
Precedent – Appeal - S. 260A	260A	Dismissal of appeal on ground no substantial question of law arises, amounts affirmation of decision of tribunal on merits binding on Tribunal. Medicare Investments Ltd. vs. Jt. CIT (2008) 114 ITD 34 (Delhi) (SB) / (2008) 304 ITR (AT) 44 (Delhi) (SB)
Precedent – Appellate Tribunal – Bound by the order of the jurisdictional High Court		The A.O. levied Additional Tax u/s 143(1A) in a case where the return of income was loss and the assessed income after adjustments resulted into loss. In appeal, levy of additional tax was deleted. On an appeal by the Department to the Appellate tribunal, the CIT(A)'s order was reversed though the decision of the jurisdictional High Court in the case of CIT vs. Premier Industries Pvt. Ltd., (1997) 227 ITR 282 (MP) was cited. The Hon'ble Court commenting on the binding nature of the High Court order, observed that "It is neither permissible nor legal for any Court and Tribunal to comment upon the decision of the Supreme Court/High Court. Similarly, it is also not permissible for the Tribunal to comment upon the manner in which a particular decision was rendered by the Supreme Court/High Court. It is also not permissible for the Tribunal to sidetrack or/and ignore the decision of the High Court on the ground that it did not take into consideration a particular provision of law. If such an approach is resorted to by subordinate Courts/Tribunals, then it is held to be not in conformity with the law laid down by the Supreme Court. It was deprecated by the Supreme Court as being improper." National Textile Corporation Ltd., vs. CIT (2008) 171 Taxman 339 (MP).
Precedent – Binding precedent		The Supreme Court held that although the judgments given by a High Court is not binding on another High Court(s), they hold persuasive value. A High Court when not following another High Court should record its dissent along with the reasons therefor. Pradip J. Mehta vs. CIT (2008) 216 CTR 1 (SC); 300 ITR 231 (SC).
Precedent – Decision		A judicial decision acts retrospectively. According to Blackstonian

of High Court – Supreme Court – Retrospectively		theory, it is not the function of the Court to pronounce a "new rule" but to maintain and expound the "old one". In other words, judges do not make law they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood. It is no doubt true that the Court has accepted the doctrine of "prospective overruling". It is based on the philosophy; "the past cannot always be erased by new judicial declaration". It may, however, be stated that this is an exception to the general rule of doctrine of precedent. ACIT vs. Saurashtra Kutch Stock Exchange Ltd. (2008) 12 DTR 346 (SC)/305 ITR 227 (SC), (2008) 173 taxman 322 (SC).
Precedent – Dismissal of special leave petition – Article 141 – Business Expenditure – PP, EPF, and ESI – S. 43B	43B	Dismissal of the Special Leave Petition in CIT vs. Vinay Cement Ltd (2007) 213 CTR 268 (SC), cannot be said to be law decided. For assessment years prior to Asst. Year 2004-05, employees contribution to PF, EPF and ESI not paid with in due date was disallowable under section 43B. CIT vs. Pamwi Tissues Ltd (2008) 3 DTR 66 (Bom.) / (2008) 215 CTR 150 (Bom).
Precedent - Supreme Court Decision		When the Supreme Court passes an order in SLP and also gives reasons, such an order is a binding precedent. ACIT vs. Changepond Technologies (P) Ltd. (2008) 14 DTR 336 (Chennai) (Trib.)
Precedent – Tribunal		Orders of the Tribunal are binding on the lower authorities. Finance Officer, MDV vs. ITO (2008) 113 TTJ 914 (Del.)
Precedent-Tribunal - S. 254(1)	254(1)	Tribunal can not take different view from the view taken by the co ordinate bench in respect of the same assessee for another year. DLF Universal Ltd v CIT (2008) 306 ITR 271 (Delhi).
Preoperative expenditure of new project – S. 37(1)	37(1)	New project undertaken by the assessee company being under the control of same management and administration and managed from common funds, was only an extension of the existing business and therefore, expenditure incurred on the new project constituted revenue expenditure. Jay Engineering Works Ltd. vs. CIT (2007) 212 CTR 562 (Del.) / (2008) 166 Taxman 115 (Del).
Professional or Technical Service Fees – S. 194J, 9	194J	Held, fees paid for obtaining advice and assistance on operational and financial aspects of business, to Mauritius company, cannot be considered as Royalty as per section 9(i) (vi), and hence no requirement to deduct TDS. And since payment for Technical Services was not covered under DTAA between India and Mauritius no tax is required to be deducted even as per provision of section 9(i)(vii). Spice Telecom vs. ITO (2008) 170 Taxman 82 (Bang.).
Profits And Gains From New Industrial	80-IB	Assessee, manufacturer and exporter, was entitled to deduction under

Undertakings - Duty Draw Back And DEPB – S. 80IB		section 80 IB, in respect of duty draw back and DEPB received by it as same had a direct nexus with business of its industrial undertaking. Modi Exports vs. ACIT (2008) 24 SOT 526 (Delhi).
Profits chargeable – S. 41(1)	41(1)	Unilateral write off of liability – Explanation 1 to s. 41(1) is effective from 1st April, 1997, therefore, the liabilities written back unilaterally by the assessee are not chargeable to tax u/s. 41(1) in Asst. Year 1996-97. CIT vs. Eid Mohd. Nizammudin (2007) 212 CTR 13 (Raj.) / (2007) 294 ITR 139 (Raj).
Profits chargeable to tax – S. 41	41	Addition under section 41(1) could not be made where no deduction or allowance were allowed in earlier assessment years. ITO vs. Bansi Lal Gupta (2008) 113 TTJ 898 (Asr.)
Project completion method – S. 145	145	Advertisement expenses of two projects being allocable to individual project have to be capitalized as work in progress and deduction is to be allowed in the year of completion of the project. ITO vs. Panchvati Developers (2008) 115 TTJ 139 (Mum.).
Prosecution – no requirement of notice to accused – no time limit for launching prosecution – Ss. 276B, 278B, Code of Criminal Procedure, 1973 S. 468	276B, 278B	There is no provision in law which requires notice to be given to the accused before launching prosecution under the I.T. Act. Where the punishment prescribed under the Act is beyond three years, the provisions of sec. 468 of the Code of Criminal Procedure, 1973, would not apply, and there is no time limit for launching prosecution. Where prosecution is launched u/s. 276B of the I.T. Act, 1961, the punishment prescribed is imprisonment up to seven years. Union of India vs. Gupta Builders P. Ltd. & Anr (2008) 297 ITR 310 (Bom.) / (2008) 215 CTR 74 (Bom).
Purchase of Immovable Properties – S. 269UD	269UD	Where the Fair Market Value of the property in question was not determined by the Appropriate Authority and neither the sales instances relied upon by the revenue authorities supplied to the seller despite specific request by the seller, the High Court held that the impugned order u/s. 269UD of the Act was not sustainable. Inter Equipments (India) P. Ltd. vs. Appropriate Authority & Ors. – (2008) 11 DTR 286 (Bom).
Purchase Of Immovable Property - S. 269UD	269UD	Bombay High Court in Mrs. Amarjit Thapar and others vs. S. K. Laul and others (2008) 298 ITR 336 (Bom), has held that for purchase of immovable property by Central Government the conditions precedent is that notice must give details which lead to interference of undervaluation. As there was no finding of undervaluation for evasion of tax, order of pre-emptive purchase held not valid. UOI vs. Amarjit Thapar (SLP No CC. 8872 Rejected on 14th July, 2008) (2008) 175 Taxman 48 (MG)
Question of law – Credit for MAT – is to be allowed before charging interest – Ss. 234B and 234C, 115JAA	115JA	Whether credit for MAT under section 115JAA is to be allowed before charging interest under sections 234B and 234C is a question of law and therefore the judgment of High Court is set aside to consider the aforesaid question in accordance with law. CIT vs. Xpro India Limited (2008) 215 CTR 400 (SC); 300 ITR 337 (SC) / (2008) 4 DTR 217 (SC).
Reassessment – After four years, valid – S. 147	147	Prima facie to claim benefit under section 80-IB of the Income-tax Act, 1961, on the relevant date one of the

		requirements was that the size of the plot of land should be a minimum of one acre. The size of the land was not mentioned in the return. Hence, there was no true disclosure of the exact size of the plot when the new construction commenced. In order to invoke the extraordinary jurisdiction of the court the petitioner must also make out a case that no part of the relevant material had been kept out from the Assessing Officer. The information was in the annexures and consequently Explanation 2(c)(iv) of section 147 would apply. The reassessment proceedings after four years were held to be valid. Girilal and Company vs. S.L. Meena, ITO & Others (2008) 300 ITR 432 (Bom).
Reassessment – Assessment – S. 147	147	The whole proceedings would start afresh where the assessment is reopened and the previous assessment is set aside. Sella Synergy (I) Ltd. vs. ACIT (2008) 117 TTJ 110 (Chennai).
Reassessment - Block Assessment – S. 147, 148, 158BA, BC, BE, BG, & 158 BH	147, 148, 158BA	Once assessment has been framed under section158 BA, in relation to undisclosed income of the block period as a result of search, A.O. can not issue notice under section 148, for reopening such assessment. Cargo Clearing Agency (Gujarat) vs. Jt. CIT (2008) 12 DTR 50 (Guj.) / (2008) 218 CTR 541 (Guj).
Reassessment – Change of opinion – S. 147	147	Notice u/s. 148 of the Act issued beyond four years was held to be bad in law and without jurisdiction where the revenue authorities failed to demonstrate that there was failure on the part of the assessee to disclose fully and truly all material facts relevant for the assessment. Nikhil K. Kotak vs. Mahesh Kumar, Assessing Officer (2008) 10 DTR 20 (Guj.)
Reassessment – Change of opinion – S. 147	147	Where the assessee had fully and truly disclosed the facts with respect to its claim of interest and capital gain in form of a note to its computation of income which were very much in knowledge of the Assessing Officer while framing the original assessment, reopening of assessment thereafter, was held to be a mere change of opinion which is not the reason for reopening of the assessment u/s. 147 of the Act. CIT vs. Tube Investment of India Ltd. (2008) 11 DTR 73 (Mad.)
Reassessment – Change of opinion – True and full disclosure – S. 148	148	Issue of notice u/s. 148 after four years – No failure on the part by the Assessee to make full and true disclosure of all materials necessary for assessment. Reopening of assessment beyond four years on the basis of subsequent decision of jurisdictional High Court was not justified. Sesa Goa Ltd. vs. Jt CIT & Ors (2007) 213 CTR 579 (Bom.) / (2007) 294 ITR 101 (Bom).
Reassessment – Change Of Status		Rajkumar Dugar (HUF) vs. ITO (2008) 12 DTR 16 (Del.)
Reassessment – Export – S. 147 r.w.s. 80HHC	147	Where the AO issued notice u/s. 148 of the Act after recording reason that, the assessee had claimed excess relief u/s. 80HHC of the Act. The Tribunal held that there was no information for taking action u/s. 148 of the Act and the action u/s. 147 was taken only due to change opinion. On reference, High Court held that in case of excessive relief claimed, u/s. 80HHC, action u/s. 147 can be taken and it was not a case of change of opinion. CIT vs. Hindustan Tools & Forgings P. Ltd. [(2007) 201 Taxation 619

		(P&H)].
Reassessment - Full And True Disclosure - After Four Years - S 147	147	Assessee having made full disclosure of material facts in the return which was accompanied by several enclosures, assessment could not be reopened beyond four years from the end of the relevant assessment year for the reason that certain income has been wrongly assessed under the head "capital gains of business or profession". Gujarat Flouoro Chemicals Ltd. vs. Dy. CIT (2008) 15 DTR 1 (Guj)
Reassessment – Full and True Disclosure – S. 147	147	Even if it was a case of deemed escapement of income within meaning of Explanation 2(c)(ii) of section 147, there being no fault on the part of assessee in making full and true disclosure, reopening of assessment after expiry of four years was barred by limitation under proviso to section 147. CIT vs. Saipem SPA (2008) 1 DTR 21 (Uttarakhand) / (2008) 300 ITR 133 (Uttarkhand).
Reassessment – Later Supreme Court decision – S. 147	147	Where while framing assessment u/s. 143(3) of the Act the Assessing Officer allowed deduction u/s. 80HH and 80I as per the prevailing law, the assessment cannot be reopened after the expiry of four years on the basis of subsequent Supreme Court decision. Austin Engineering Co. Ltd. vs. Jt. CIT (2008) 9 DTR 268 (Guj.)
Reassessment – Limitation – Notice – S. 143(2)	143(2)	When notice u/s 148 was issued and the return was filed in response thereto, notice u/s 143(3) issued beyond 12 months from the date of filing of return but before expiry of time limit for making assessment, the reassessment or re-computation u/s 153(2) shall not be invalid – matter remanded for reconsideration. CIT vs. Mrs. C. Malathy (2008) 214 CTR (Mad) 173 / (2007) 294 ITR 532 (Mad).
Reassessment – Notice – Assessment Not Finalised – Ss. 148, 147	147, 148	When the valid assessment is pending, the Assessing Officer cannot issue notice under section 148 for the purposes of reopening under section 147. CIT vs. K. M. Pachayappan (2008) 304 ITR (264) (Mad.)
Reassessment – Notice – S. 148	148	Whether on the facts when assessment has been framed u/s. 158BA in relation to undisclosed income for the Block Period, a notice u/s. 148 could be issued for reopening of such assessment. Held, no. Notice u/s. 148 deserves to be quashed. Cargo Clearing Agency (Gujarat) vs. Jt. CIT (2008) 218 CTR 541 (Guj.) / (2008) 12 DTR 50 (Guj).
Reassessment – Notice – Service of notice to employee – S. 148	148	Receipt of the notice by employee is not receipt of the notice by the assessee unless he is authorized to receive any summons on behalf of the assessee. CIT vs. Rajesh Kumar Sharma (2007) 165 Taxman 488 (Delhi) / (2008) 214 CTR 547 (Delhi).
Reassessment – Notice – Ss. 147, 148	147, 148	Where the assessee was not served with the notice u/s. 147 and 148 of the I.T. Act 1961, the proceedings for the Asst. Year 1996-97 were void. CIT vs. Harish J Punjabi (2008) 297 ITR 424 (Del.)
Reassessment – Notice for Reassessment – S. 148	148	Unless and until the earlier proceedings commenced on issuance of notice u/s. 148 were disposed of, subsequent notice u/s. 148 cannot be issued. Accordingly, the appeal filed by the assessee was allowed and the second notice issued by the AO was held as not valid and the

		assessment made thereunder was quashed. The National Leather Mfg. Co. vs. DCIT, ITA No.2369/M/2003, Bench–G, A.Y. 1993-94, dt. 16-10-2007, BCAJ p. 271, Vol. 39-E, Part 3, December, 2007.
Reassessment – Only favour of the revenue – S. 147	147	Re-opening is only to favour the revenue and cannot be used to favour the assessee. Sella Synergy (I) Ltd. vs. ACIT (2008) 117 TTJ 110 (Chennai).
Reassessment – Pendency of Assessment – S. 147, 148	147, 148	During pendency of valid return, initiation of reassessment proceeding held to be invalid. Handloom Intensive Development Project Ltd. vs. ACIT (2008) 1 DTR 116 (Luck.) ACIT vs. Cannon Steels (P) Ltd. (2008) 1 DTR 170 (Mum.)
Reassessment - Reason To Believe – S. 148	148	Merely because the block assessment made under section 158BC, has not been upheld, it can not be said that assesses, income has escaped assessment and therefore, the same cannot be reason enough to invoke section 147, more so, when the reasons make no reference to the block assessment or the proceedings pursuant thereto. Smt. MRA Ananta Naik & Ors. vs. Dy. CIT (2008) 15 DTR 8 (Bom.)
Reassessment – Recorded reasons – S. 147	147	Notice u/s. 148 issued by the Assessing Officer other than the one who recorded reason to believe was held to be invalid. Reopening of assessment proceeding on the basis of finding of another Assessing Officer in a later year suffered from change of opinion and held to be invalid. Hynoup Food & Oil Industries Ltd v/s. CIT – [(2008) 11 DTR (Guj) 241]
Reassessment – Recorded reasons – S. 147	147	Reopening of assessment for A.Y. 1946-47 was held to be invalid where the revenue authorities failed to produce record for reassessment proceedings and there was nothing on the record to suggest that necessary approval was granted by the C.B.D.T. for reopening the assessment. Gokul Chand Rattan Chand (HUF) vs. CIT (2008) 10 DTR 80 (Del.)
Reassessment – Recorded reasons – S. 147	147	The Hon'ble High Court quashing the reassessment order passed by the Assessing Officer held that where during the reassessment proceedings it transpired that the income alleged to have been escaped as mentioned in the reasons recorded had not actually escaped assessment, in the same reassessment proceedings the Assessing Officer had no jurisdiction to add other income which was found to have escaped assessment, while recording the reasons for reopening the assessment. CIT vs. Dr. Devendra Gupta (2008) 12 DTR 235 (Raj).
Reassessment – Recorded reasons – Ss. 147 & 148	147, 148	Assessing Officer is bound to record reasons for reopening the assessment before issuing any notice u/s. 148 of the Act. This is a mandatory requirement, and the Assessing Officer is not permitted to record the reasons between the date of issue of notice and service. Rajoo Engineers Ltd. vs. Dy. CIT (2008) 10 DTR 173 (Guj.). / (2008) 218 CTR 53 (Guj).
Reassessment – Recorded reasons – Ss. 147 & 148	147, 148	Notice issued by the Assessing Officer without recording reasons, which is mandatory requirement of section 148 of the Act, the entire proceeding and consequential orders passed by the Assessing Officer are

		void ab initio. Kavee Enterprises (P) Ltd. vs. CIT [(2008) 10 DTR 106 (Jharkhand)
Reassessment - Recording Reasons - Issuing notice – S. 147, 148	S. 147, 148	Assessing officer recording reasons for assessment and assessing officer issuing notice under section 148 must be the same person. Successor assessing officer cannot issue notice under section 148 on the basis of reasons recorded by predecessor assessing officer. Notice issued invalid and deserves to be quashed. Hyoup Food and Oil Industries Ltd. vs. ACIT (2008) 307 ITR 115 (Guj.)
Reassessment – Revised Return – S. 147	147	Where the assessee withdrew the excess claim of depreciation by filing revised return u/s. 139 (5) of the Act within time, the reason to believe for reopening the assessment, become non-existent and the action of the Assessing Officer making reassessment and consequential additions on account of other items was held to be invalid. CIT vs. Raj Finlease Ltd. (2008) 9 DTR 81 (Mad.)
Reassessment – S. 147	147	Assessment of an assessee cannot be reopened after four years, only on the ground that as per T.D.S certificate the work done was shown at a higher amount than the work done shown in the return of income filed by the assessee. The T.D.S. certificate is not concerned with the work done by the assessee. As such, it cannot be said that there was no failure on the part of the assessee to disclose truly and fully all the material information with respect to the particulars of its income. Ganesh Valabhai Family Trust vs. Dy. CIT (2008) 5 DTR 317 (Guj.) / (2008) 217 CTR 588 (Guj).
Reassessment – S. 147	147	Initiation of reassessment proceedings during pendency of valid return was invalid in law in spite of Explanation 2(b) to section 147. Handloom Intensive Development Project (Bijnore) Ltd. vs. ACIT (2008) 114 TTJ 416 (Luck.)
Reassessment – S. 147	147	The A.O. initiated reassessment proceeding u/s. 147 on the ground that while framing original assessment the A.O. was not right is allowing deduction u/s. 80HHC of the Act in relation to the income of service charges and commission. On appeal High Court held that the earlier assessment was made u/s. 143(3) of the Act and there was nothing to show or even suggest that assessee had failed to fully and truly disclose all material necessary for the assessment. If the A.O. chooses not to investigate the facts then, it would amount to giving a premium to an authority exercising quasi judicial function to take benefit of its own wrong. CIT vs. M/s. Indian Sugar & General Ind. Ex. [(2008) 202 Taxation 324 (Del)].
Reassessment – S. 147 r.w.s. 153	147	Proviso to section 147 does not have effect of curtailing limitation period for passing order under section 147 as prescribed under section 153(2). Gujarat Credit Corpn. Ltd. v. Asstt. CIT [2008] 113 ITD 133 (AHD.)(SB)].
Reassessment – S. 148	148	An attempt on part of Assessing Officer to probe into return further, without any fresh facts or change in law coming to his notice, would be a case of "reason to suspect" and not "reason to believe". In the instant case, the only reason for reopening the assessment was that the balance sheet of the assessee revealed that he had received a gift of certain

		amount for which no details had been filed. There was no reference to any investigation carried out in the assessee's own case or in the case of the donor or any other evidence or material collected as a result of any investigation carried out by any investigating agency including the income tax Department in any case which could have afforded the required nexus or live link or rational connection with the belief that the income chargeable to tax had escaped assessment. Accordingly the reopening of assessment was void ab initio and bad in the eyes of law. ACIT vs. O. P. Chawala (2008) 114 ITD 69 (Delhi) (TM)
Reassessment – S. 148	148	Reason to believe or Change of Opinion – Issue of notice on varied interpretation of same provisions by the later Assessing Officer in the subsequent years assessments or relying on the decision of Tribunal amounts to mere change of opinion and not "reason to believe" in order to justify the re-opening. Seimens Information Systems Ltd. vs. Asst. CIT (2008) 214 CTR (Bom) 16
Reassessment – S. 148	148	Reassessment completed by an Assessing Officer on the basis of notice under section 148 issued by another Assessing Officer, who had no jurisdiction over the assessee held to be invalid. Reassessment is also held to be invalid for the reason that the jurisdiction over the assessee's case was not transferred by any order passed under section 127 by any competent authority to the Assessing Officer who has passed the order. ITO vs. Krishan Kumar Gupta (2008) 16 DTR 1 (Del.)(Trib.)
Reassessment – S.143(1), 147	143(1), 147	Section 147 can not be used as a substitute for section 143(2) particularly when return of income was filed and the assessment was done u/s. 143(1). In other words provisions of section 147 can not be opted when notice period to make the general enquiry u/s. 143(2) has lapsed. ACIT vs. Muthoot Leasing & Finances Ltd. (2008) 21 SOT 281 (Cochin), followed Kerala High Court's judgment in case of Travancore Cements Ltd. vs. ACIT, reported in 4 KLT 344
Reassessment – Validity – S. 143(2), 147, 148	S. 143(2), 147, 148	Period for issue of notice under section 143(2), not expired, reassessment held to be invalid. CIT vs. Qatalys Software Technologies Ltd. (2009) 308 ITR 249 (Mad.)
Reassessment – When original assessment was available and assessment was completed u/s.143(3) – Reassessment is not valid – S. 148	148	There was no failure on the part of the assessee to disclose voluntarily and truly all material facts and the issue of scrap was generated during the manufacturing process was before the Assessing Officer. The Tribunal had accepted the manner in which the scrap generated was disposed of and the Tribunal had accepted the material of accounts when the scrap was finally sold. Stock register of the scrap generated was not maintained. But this information was available with the Assessing Officer when the assessment was made under section 143(3) of the Act. There was no reason warranting the reopening of the concluded assessment. Niba India and Another vs. Smt. Arti Handa, Asstt. CIT and Other

		(2008) 300 ITR 283 (Bom.)
Reassessment – Limitation – Applicability – Ss. 147, 149	147, 149	Applicability of proviso to s. 147 vis-à-vis s. 149, assessment cannot be reopened after expiry of four years from the end of the relevant assessment year, except in circumstances specified in the proviso to s. 147. Action u/s. 147 having been initiated after expiry of four years, same was barred by limitation. Assessment cannot be reopened on the basis of same materials which were available with the concerned authorities when the assessment order was passed. Anil Kumar Bhandari vs. Jt. CIT & Ors. (2007) 212 CTR 439 (Cal.) / (2008) 294 ITR 222 (Cal).
Reassessment– Limitation – If there is no failure on the part of assessee – Assessment cannot be reopened after 4 years – S. 148	148	It was clear that there was no fault of the assessee. Even if it were deemed to be escaped assessment within the meaning of Explanation 2(c)(ii) of section 147, in view of the undisputed fact that there was no fault of the assessee, the delay could not be condoned. Limitation was applicable under the proviso appended to section 147. Limitation of four years had already expired. The reassessments were barred by time. The application of section 147 is subjected to the proviso as the proviso is qualified with the words "provided that". Therefore, by virtue of the proviso, the whole application of section 147 is dependent on the failure on the part of the assessee for the escaped assessment. It was not available where the fault was of the Assessing Officer and that could be corrected under section 154 where also the limitation of four years is provided for its application. Therefore, even the correction, if not termed as reassessment, was also barred by time. CIT and Another vs. Saipem Spa (2008) 300 ITR 133 (Uttarakhand).
Reassessment notice on basis of retractment – Not valid – Ss. 147, 148	147, 148	Statement of third party that loan to him from assessee was not genuine. There was retraction of statement and subsequent death of third party. It was held that notice based on such statement was not valid. Indian Express Newspapers (Bombay) P. Ltd. and Another vs. UOI (2008) 300 ITR 351 (Bom). / (2008) 214 CTR 479 (Bom) / (2008) 2 DTR 89 (Bom).
REASSESSMENT-VALIDITY. – S. 142(1), 143 (3).	142(1)	Notices issued under sections 142 (1) and 143 (3), without disposing of the objections -raised in response to the reasons recorded, held to be invalid. Premier Ltd v Dy CIT. W.P. no 2340 of 2008 DT 22-10-2008(Bom). (Unreported)
Reassessment with the reason to believe – S. 148	148	Reopening of assessment on the opinion of another Assessing Officer on the same set of documents is invalid under the law. CIT vs. Shree Rajasthan Syntex Ltd. (2008) 217 CTR (Raj.) 209
Recovery – Attachment – S. 222 & Sch. 11 Rule 53	222	Assessee purchasing land in the name of his minor son in the year 1974 and the land and house thereon standing in the name of assessee's son at least from Asst. Year 1979-80, such land and house could not be attached and sold for recovery of tax arrears of assessee for block periods 1986-87 to 1995-96 by recourse to explanation to section 222(1). Samson Johan vs. Tax Recovery Officer & Ors (2008) 3 DTR 124 (Bom.)
Recovery – Attachment by tax recovery officer of	2206)	The powers of Tax Recovery Officer under rule 11 of Second Schedule relate only to properties ostensibly and apparently owned by assessee. If

the properties owned by the assessee only – S. 220(6)		the property is ostensibly and apparently in name of third party, then if income tax authorities claim that said property is actually possessed or owned by assessee in default, they shall have to establish their claim in civil court. Smt. Darshana Aggarwal vs. TRO (2008) 173 Taxman 90 (HP) / (2008) 302 ITR 82 (HP) / (2008) 215 CTR 419 (HP).
Recovery – Powers of It Authorities – S. 281	281	Authorities having no power to declare a transfer null and void – Appropriate remedy is to file suit u/s 11(6) of Schedule II. Shamin Bano G. Rathi & Anr. vs. OBC Ltd. 214 CTR (Bom) 110.
Recovery – Stay - S. 220(6)	220(6)	The Court held that stay application must be disposed of by a speaking order after consideration of all relevant factors having bearing on demand raised as well as having regard to the Instruction No. 1914 dt. 2-12-1993. Subhash Chander Sehgal vs. Dy. CIT (2008) 173 Taxmann 412 (Delhi)
Recovery – Stay – S. 226(3)	226(3)	Demand raised in High pitched assessment need to be stayed, as its recovery would cause genuine hardship. Instruction No. 1914 of 1993 talks of one such exception of highly pitched assessment, where recovery should be kept in abeyance necessarily. Soul vs. Dy. CIT (2008) 173 Taxmann 468 (Delhi) / (2008) 14 DTR 267 (Del.) / (2008) 220 CTR 211 (Del.)
Recovery – Stay Application has to be disposed of by passing a speaking order – S. 220(6)	220(6)	The stay application filed under section 220(6) should be disposed of by passing a speaking order giving consideration to relevant factors, as required by law and as mentioned in Instruction No. 1914 issued by CBDT. Subhash Chander Sehgal vs. DCIT (2008) 173 Taxman 412 (Delhi).
Recovery of Tax – S. 220(6)	220(6)	Where assessee files an application for stay when the appeal is pending before the CIT(A), unless the Assessing Officer rejects the application, he cannot direct for attaching the assessee's bank account. Dr. T.K. Shanmugasundaram vs. CIT and others (2008) 303 ITR 387 (Mad.)
Rectification – S. 154	154	CIT(A) is an authority of Income Tax which is authorised to rectify its order as per provisions of ss. 154 and 116. Failure to apply a retrospective amendment amounts to a mistake apparent from record. Shokat Ali Contractor vs. ITO (2007) 164 Taxman 99 (Jodhpur) (SMC).
Rectification – S. 154	154	Failure to carry out directions of CIT(A) is mistake apparent from record. Procter & Gamble India Ltd. vs. Dy. CIT (2008) 113 TTJ 682 (Mum.)
Rectification — S.254(2)	254(2)	Order passed by Tribunal on the basis of decision of High Court subsequently overruled by Supreme Court suffers from mistake apparent rectifiable u/s. 254(2). Jt. CIT vs. Milton's Ltd. (2007) 112 TTJ 167 (Mum.).
Rectification of Mistake – Appellate Tribunal – S. 254(2)	254(2)	Non consideration of decision of Jurisdictional High court or Supreme Court is a mistake apparent from record rectifiable under section 254(2). ACIT vs. Saurashtra Kutch Stock Exchange of India. (2008) 305 ITR 227 (SC) / (2008) 12 DTR 346 (SC) / (2008) 173 Taxman 322 (SC).
Rectification of mistake – Cannot be	154	Assessment completed under section 144 in status of registered firm.

made to nullify effect of Tribunals order – S. 154		Assessing Officer disallowed interest and salary paid to partners, Tribunal allowed deduction. Subsequently the Assessing Officer noticed that as assessment was made u/s. 144 the status of the firm should have been taken as AOP and again disallowed interest and salary. It was held that, Assessing Officer could not change status of assessee to association of persons and withdraw deduction in rectification proceedings after decision of Tribunal. CIT vs. Kartar Singh and Co. (2008) 302 ITR 66 (P&H.)
Rectification of mistake – S. 154	154	If the application for rectification is made within 4 years, then the rectification order can be passed by the Tribunal after the expiry of 4 years. Sree Ayyanar Spinning and Weaving Mills Ltd. vs. CIT (2008) 301 ITR 434 (SC).
Rectification of Mistake – S. 154	154	Once Commissioner had recorded his finding against the assessee, the Commissioner is not competent to review its own order on basis of same facts in garb of powers vested u/s. 154. All issues which involve prolonged arguments and are debatable and where two views are possible fall outside the scope of powers u/s. 154. Pushpa Gujral Science City Society vs. CIT (2000) 165 Taxman 67 (Amritsar).
Rectification of mistake – S. 154	154	While disposing of the appeal against the order u/s. 154 passed by the Assessing Officer rectifying certain mistakes in the order passed by him u/s. 143(3) of the Act the CIT (A) cannot set aside assessment order passed by the Assessing Officer made under 143(3) of the Act which had attained finality, as no appeal was preferred against the order u/s. 143 (3) passed by the Assessing Officer. R. B. L. Banarsi Dass & Co. P. Ltd. vs. CIT (2008) 7 DTR 388 (P&H) / (2008) 170 Taxman 419 (P&H).
Rectification of mistake – S. 254	254	Tribunal has to follow the decision of the jurisdictional High Court without making any comment upon the judgment that it did not take into consideration a particular provision of law. National Textile Corporation Ltd. (M.P.) vs. CIT (2008) 5 DTR 117 (MP) / 216 CTR 153 (MP).
RECTIFICATION OF MISTAKES – S. 154	154	Power of ITO to amend assessment in consequence of decision. In an appeal / revision / reference or by a High Court or Supreme Court is not traceable to section 154, but is inherent and traceable to section 143 and 144 and therefore, limitation, as contained in section 154(7) would not apply to passing of such order. Peninsula Land Ltd. vs. CIT (2008) 175 Taxmann 58 (Bom.)
Rectifying of mistake – Interest – Ss. 139, 154	139, 154	Return of income in response to notice u/s. 148 was filed belated. Accordingly, interest was charged u/s. 139(8) of the Act. The interest so charged was further enhanced by the AO, by passing order u/s. 154 of the Act. On appeal the High Court held that at the time when rectification order was passed by the AO the period for charging interest was a debatable issue, as such the same, was outside the preview of rectification u/s. 154 of the Act. CIT vs. Mangal Sain [(2007) 201 Taxation 323 (P&H)]
Reference to	55A	The assessee had shown fair market value as on 1-4-1981 at Rs. 10

Valuation officer – S. 55A		lakhs. U/s 55A, the A.O. made reference to the valuation officer who valued the property at Rs. 6.6 lakhs as on said date. On Appeal, CIT(A) took the fair market value at Rs. 9.36 lakhs. On further Appeal, the Tribunal held that reference u/s 55A could be made only if the A.O. was of the opinion that the value returned by the assessee was less than its Fair Market Value. The act of the A.O. in accepting the valuation made u/s 55A, which was undoubtedly less than the Fair Market Value shown by the assessee, proved that the A.O. was of the opinion that the assessee's claim was more than its FMV. Thus, according to the Tribunal, the A.O. was not justified in making reference to the Valuation Officer. ITO vs. Lalitaben B. Kapadia, ITA No. 8763/Mum/2004, Bench – K, A. Y. 2001-02, dt. 20-9-2007 - BCAJ p. 16, Vol. 40-A, Part 1, April 2008.
Registration – S. 12A	12A	Belated application for registration u/s. 12A filed with detailed reasons for such delay was summarily rejected without giving any reason. Held that order without assigning any reason for coming to such conclusion cannot be said to be judicious order. Pushpa Gujral Science City Society vs. CIT (2007) 165 Taxman 67 (Amritsar).
Reopening – Change of opinion – S. 148	148	That the reasons recorded by the A.O. for reopening the assessment showed that neither was the explanation given by the assessee and accepted by the AO found to be erroneous nor was there any other material/information on the basis of which a prima facie opinion was formed to the effect that by not increasing the book profit with the amount of the provision for deferred taxation, income chargeable to tax had escaped assessment. Thus, the reopening of the assessment was not based on any material but merely on change of opinion without any basis. The notice u/s. 148 was not valid and was liable to be quashed. M.J. Pharmaceuticals Ltd. vs. CIT (2008) 297 ITR 119 (Bom.)
Re-opening – S. 147	147	Jurisdiction to re-open the assessment is totally based on the information which should be relevant and material. Reason to suspect is not reason to believe. In the instant case when Return was filed in wrong jurisdiction and when there was no material information which could lead to believe that income had escaped assessment, re-opening can not be upheld. Paint Trade Linkers vs. ACIT (2008) 171 Taxman 31 (Lucknow)
Re-opening – S. 147	147	Re-opening of Assessment in Assessee's case, who was engaged in construction activities, relying on the report of DVO, determining cost of construction at a higher value than that declared by assessee, without pointing out any defect or discrepancy nor pointing out any material defect in the books of account, was held to be invalid. Vrindaban Real Estate (P) Ltd. vs. ACIT (2008) 173 Taxman 21 (Agra).
Re-opening – Ss. 147, 132	147, 132	The material gathered during search u/s 132, can not be a reason to re-open the concluded assessment. Smt. R. Rajeswari vs. ITO (2008) 172 Taxman 40 (Chennai).
Reopening – Ss. 147, 148		Re-opening of Assessment completed after 4 years from end of relevant Assessment Year was bad in law and invalid, as it was not established that failure or omission was on part of assessee to disclose fully and truly all material facts. It was further held that it was merely change of opinion on same set of

		facts available at time of original assessment. Non specification of amount of income escaped, nor disclosure of reasons to reassess is material and would vitiate the notice issued u/s 148. ACIT vs. Bhagat Industrial Corp. Ltd. (2008) 173 Taxman 55 (Amritsar).
Repairs – Replacement of machinery – S. 37	37	Expenditure on repairs and replacement of machinery having been incurred for the purpose of running existing machinery more efficiently was held to be revenue in nature. CIT vs. Mihir Textiles Ltd. (2008) 8 DTR 156 (Guj.)
Repairs – S. 31	31	Expenditure incurred on construction of glass curtain wall for better look of hotel building was an allowable expenditure Fition Hotel vs. ITO, ITA No. 7035/Mum/2003, dt. 8-3-2007 - BCAJ p. 293, Vol. 40-A, Part 3, June 2008.
Reserve – Transfer to utilized reserve account – S. 80HHD	80HHD	Mere transfer from '80HHD reserve account' to the '80HHD utilised account' does not stand violation of s. 80HHD once it had been utilised for the purposes specified in s. 80HHD(4). Travel Corporation (India) (P). Ltd. vs. ACIT (2007) 165 Taxman 204/293 ITR 577 (Bom.)
Resident but not ordinarily resident – S. 6(6)	6(6)	The Tribunal noted that the provisions of section 6(6)(a) uses the term 'or' and not 'and' between the two conditions given therein. Accordingly, a person would be considered as RNOR if he complies with either of the two conditions given therein. It disagreed with the CIT(A) that in order to qualify as RNOR, the assessee should fulfil both the conditions. In the case of the assessee, since he was not resident in India in nine out of ten previous years, his status would be that of RNOR. Note : The provisions of section 6(6) have been substituted by the Finance Act, 2003 w.e.f. 1-4-2004. Jayram Rajgopal Poduval vs. ACIT, ITA No. 7072/M/2004, Bench – H, A. Y. 2001-02, dt. 18-1-2008 - BCAJ p. 18, Vol. 40-A, Part 1, April 2008.
Residential accommodation provided by employer – S. 17(2)(ii)	17(2)(ii)	Even before the amendment of Rule 3 by IT (Twenty–second Amendment) Rules, 2001, s. 17(2)(ii) was not to apply if it is established that there was no concession in the matter of accommodation provided by the employer to the employees. It is open to the petitioners to contend that there is no concession in the matter of accommodation provided by the employer and the case is not covered by s. 17(2)(ii). All India Punjab National Bank Officers' Association & Anr. vs. Union of India & Ors. (2007) 212 CTR 339 (MP).
Residential status – Non-resident – S. 6(1)(c)	6(1)(c)	Assessee who was employed in foreign in foreign country was not on leave or vacation while he was in India for less than 90 days in the relevant previous year but on termination of one service, and, therefore, his case does not fall within the Explanation to section 6(1) and he has to be treated as a resident u/s. 6(1)(c) and not a non-resident. V.K. Ratti vs. CIT (2007) 212 CTR 552 (P&H).
Residential status – S. 6	6	For the assessment year 1982-83, the Supreme Court came to the conclusion that a person would be an ordinary resident only if (a) he has

		been resident in India in nine out of ten preceding years, and (b) he has been in India for at least 730 days in the previous seven years. Pradip J. Mehta vs. CIT (2008) 216 CTR 1 (SC); 300 ITR 231 (SC).
Return – Assessment - Signed By Dead Person Null And Void - S. 139, 143(3)	139, 143(3)	Return signed by dead person filed after his death. Return was null and void and no valid assessment could have been made on the basis of invalid return. CIT vs. Moti Ram (Decd) Through L/H. Dharam Pal (2008) 13 DTR 212 (P&H) / (2008) 219 CTR 49 (P&H).
Return – S. 139(5)	139(5)	The assessee revised its return pursuant to a resolution passed subsequent to the close of the previous year adopting change in method of valuation only for the reason that the new method is more realistic. The Court held that such a revision is not a good reason for the purpose of revised return. Golden Insulation and Engg. Ltd. vs. CIT (2007) 165 Taxman 105 (Delhi).
Return – Signing of return by Secretary – S. 140(c)	140(c)	The AO treated a return as invalid for it was signed by the Secretary and not the Managing Director. The Court held that such an error can be removed by submission of a fresh return under the signature of the Managing Director. Bharat Nidhi Ltd. vs. CIT (2007) 165 Taxman 314 (Delhi).
Return Loss – Film Production Expenses –Rule 9A – S. 80	80	The Supreme Court was concerned with a case where the film was exhibited for less than 180 days. The rule states that when the film is exhibited for less than 180 days, deduction of the cost of production is to be allowed to the extent of the amount released during the period in the year and the balance amount shall be allowed in the next year. The assessee did not file a loss return under section 139(3) and the issue was whether section 80 would apply and the assessee would not be allowed the loss in the next year. The Supreme Court held that the balance cost of production had to be amortised under rule 9A(2) and then carried forward and allowed as deduction for the next year. This was not a business loss as contemplated by section 80 of the Act. CIT vs. Joseph Valakuzhy (2008) 8 SCC 127 / (2008) 302 ITR 190.
Return of Income – signed by managing director – S. 139(9), 292B	139(9), 292B	A return of income is required to be signed mandatorily by managing director of company and in his absence, due to certain reasons, by any director thereof. A return of income which is signed and verified by a person other than one authorised under Act, shall be treated to be defective which would be amenable to provisions of sections 292B and 139(9) and assessing authority, in such circumstances, shall provide an opportunity to assessee to rectify that defect under section 139(9) before treating same to be invalid and non est. Hind Samachar Ltd. vs. Union of India (2008) 169 Taxman 302 (P&H) / (2008) 5 DTR 88 (P&H) / 27 CTR 637 (P&H).
Revenue expenditure – Expenditure on repair and renovation of rented premises – S. 37(1)	37(1)	Expenditure incurred by an advocate, on repairs and renovation of rented office premises for running the profession smoothly and more profitably, was revenue in nature. CIT vs. Dr. A.M. Singhvi (2007) 212 CTR 1 (Raj.)
Revised Return - Claim in assessment	S. 139(5),	Assessee having duly furnished the documents and submitted form no 10CCB during assessment proceedings, claiming deduction under

proceedings - S. 139(5), 80–IB	80–IB	section 80IB which was not claimed in the return, deduction is admissible even in the absence of a revised return. CIT vs. Ramco International (2009) 17 DTR 214 (P& H) Editorial note:- Gietage (India) Ltd. vs. CIT (2006) 284 ITR 323 (SC)
Revision – Assessment computed u/s. 143(1) – Ss. 263, 143(1)	263, 143(1)	That the circular issued by the Board is binding upon the authorities and, therefore, the Commissioner of Income tax was not justified in initiating proceedings u/s. 263 of the Act in respect of the assessments completed under sec. 143(1). CIT vs. Mahendra Kumar Bansal (2008) 297 ITR 99 (All.) / (2008) 214 CTR 349 (All).
Revision – Debatable – Merger - S. 263	263	Issue regarding levy of surcharge under proviso to section 113 inserted w.e.f. 1st June 2006, in cases of search conducted before that date being debatable as on that date the revision under section 263 was not justified. Once the issue of levy of surcharge under proviso to section 113 has been decided by CIT(A), CIT has no jurisdiction to initiate proceedings under section 263. CIT vs. Ansal Properties & Ind. (P) Ltd. (2008) 14 DTR 227 (Del.)
Revision – Manufacture or Produce - Repair of transformers with addition of parts – S. 80IA, 263	S. 80IA, 263	Assessee engaged in repair of burn transformers by using only the cabinet and lamination of burnt transformers and replacing various parts by parts manufactured by it, which were independently saleable in the market, granted exemption from payment of excise duty on such manufactured parts, was rightly granted deduction under section 80IA(2)(iv)(c) by the A.O. and the view of AO being a possible view, CIT was not justified in holding that the same was erroneous and prejudicial to interests of revenue and revision order was not justified. Pal & Pal Electromechanical (P) Ltd. vs. CIT (2009) 17 DTR 424 (Agra) (TM) (Trib.)
Revision – Penalty – Initiation of Proceedings – S. 263	263	Direction by Commissioner, in exercise of powers u/s. 263, to AO to consider initiation of penalty proceedings u/s. 271(1)(a) of Act against assessee is not permissible. CIT vs. Parmanand M. Patel 2007 TLR 726 (Guj).
Revision – Prejudicial to the interest – S. 264	264	No order prejudicial to the interest of the assessee can be passed u/s. 264 of the Act and any order passed on revision application u/s. 264, cannot be sustained to the extent it is adverse to the interest of the assessee. S.J. Sanghvi vs. CIT & Anr. (2008) 10 DTR 98 (Guj.)
Revision – S. 263	263	The phrase “prejudicial to the interest of revenue” in s. 263 has to be read in conjunction with the expression “erroneous”. When the Assessing Officer takes one of the two views permissible in law and which the Commissioner does not agree with and which results in a loss of revenue, it cannot be treated as erroneous order prejudicial to the interest of revenue, unless the view taken by the AO is completely unsustainable in law. CIT vs. Max India Ltd. [2007] 295 ITR 282 (SC), 213 CTR 266
Revision – S. 263	263	The Tribunal held that the CIT wanted to indicate the same thing what the A.O. had indicated, but for different reasons. It further observed that an order u/s 263 cannot be passed for giving additional reasons or substituting reasons by a higher authority to support the same case. According to it, when the A.O. had in fact rejected the claim of the

		assessee, it cannot be said that any prejudice was caused to the Revenue. Merely because the CIT was not happy with the reasons given by the A.O., the same did not give jurisdiction to invoke the powers conferred on him u/s 263. Manisha R. Chheda vs. ITO, ITA No. 5961/Mum/2004, Bench – B, A. Y. 2001-02, dt. 17-8-2007 - BCAJ p. 17, Vol. 40-A, Part 1, April 2008.
Revision – S. 263	263	Where the Assessing Officer allowed the payments to sub – contractors as genuine after verification of all the evidences placed on record by the assessee, the High Court held that under these circumstances the Commissioner was not justified in exercising his revisional jurisdiction u/s. 263 of the Act on the basis of material collected at the time of revisional proceedings. CIT vs. R. K. Construction Co. (2008) 12 DTR 210 (Guj.)
Revision – S. 264	264	Where the Commissioner exercising its revisional authority u/s. 264 of the Act, directed the Assessing Officer to adjudicate and examine a specific issues. However, the assessment was framed by the Assessing Officer on a higher income by assuming more powers than that of revisional authority. The action of the Assessing Officer was held patently illegal and without jurisdiction. N. Seetharaman vs. CIT (2008) 6 DTR 238 (Mad.) / (2008) 298 ITR 210 (Mad).
Revision – Second opinion possibility – S. 263	263	The Commissioner cannot use his powers on the mere pretext that a second opinion is possible on a certain issue. In this case the assessing officer treated the insurance compensation as a capital receipt under an order passed u/s. 143(3), whereas the Commissioner ordered the AO to consider it as revenue receipt. CIT vs. Vinod Kumar Gupta (2007) 165 Taxman 225 (P&H).
Salary – Stock Appreciation Rights – Interest – S. 2 (24), 4, 15, 45, 56, 234B	2(24)	Amount received by assessee, Managing Director of PGI India, a part of group companies headed by PGU in USA on redemption of stock appreciation rights issued in favour of assessee by PGU was income chargeable to tax under head salaries or in alternative under head income from other sources. Amount received by the assessee being subject to TDS he could not be said to be defaulted for not paying advance tax, hence interest under section 234B was not chargeable. Sumit Bhattacharya vs. ACIT (2008) DTR 25 (Mum.) (SB).
Salary Income – Ss. 10(10C) & 89	10(10C)	Amount received by the employees of the Reserve Bank of India opting for the 'Optional Early Retirement Scheme' is eligible for deduction u/s. 10(10C) of the Act as all the condition of rule 2BA of the Income Tax Rules, 1962 were complied with. The Hon'ble High Court further held that the employees were also entitled for relief u/s. 89 of the Act. CIT vs. Koodathil Kallyatan Ambujakshan (2008) 12 DTR 138 (Bom.) / (2008) 219 CTR 80 (Bom).
Scope of jurisdiction in a reference		The Supreme Court held that the Tribunal is a final fact finding authority. In a reference to the High Court, fact can only be gone into only a finding of fact recorded by the Tribunal has been challenged on the grounds of perversity. Sudarshan Silk & Sarees vs. CIT (2008) 216 CTR 12 (SC); 300 ITR 204 (SC).

Scope of Writ Jurisdiction		Respondent was a manufacturer of Vicco Vajradanti and Vicco Turmeric stated to be ayurvedic medicines. The High Court dismissed the appeal of the appellant holding that impugned goods were ayurvedic medicines. Two SLPs filed by the appellant which were dismissed and disposed of simultaneously with a rider that the claim for refund of the amounts already paid would be subject to ascertaining whether the amounts were passed on to the purchaser or not and consequential relief shall be subject to the 11B. Second Show Cause Notice was issued by the Department about the same matter. However the matter was withdrawn. Central Board of Excise issued a circular withdrawing its earlier clarification in respect of Vicco products and asked the authorities to reopen and finalise the classification on the basis of Judgment in Shree Baidyanath Bhavan vs. CCE, Nagpur. A fresh show cause notice was issued to the respondent. Whether the said show cause notice was without jurisdiction and had been issued in arbitrary exercise of power and that it is an abuse of process of law — Held, where a Show Cause Notice was issued either without jurisdiction or in an abuse of process of law, certainly in that case, the Writ Court would not hesitate to interfere even at the stage of issuance of Show Cause Notice. Classification of the said products having attained finality pursuant to the decision of this Court. Appellants have no jurisdiction to issue impugned Show Cause Notice in respect of an issue which stands concluded by the decision of this Court. It is an abuse of process of law. High Court after referring to the history of litigation rightly concluded that the matter stood concluded by Judgments of this Court and the High Court in respondents' case. High Court rightly observed that the impugned Show Cause Notice was nothing but a repetition of the earlier Show Cause Notices with slight variations which in no way was relatable to any different test. When the factual scenario is considered in the background of the legal principles the inevitable conclusion is that the appeal is without merit. Union of India vs. Vicco Laboratories (2008) 10 RC 377.
Search & Seizure – Moneys in the bank account is not equivalent to cash cannot be impounded – S. 132	132	The Supreme Court held that cash in bank is conceptually different from cash in hand and it is not permissible for the department to convert asset to cash and thereafter impound it in case of search conducted under section 132 of the Act. The relationship between the banker and the customer is not that of trustee and beneficiary but is one of debtor and creditor. K.C.C. Software Limited vs. DIT(Investigation) (2008) 298 ITR 1 (SC), (2008) 214 CTR 553
Search & Seizure - Powers Of Tribunal - Validity Of Search – S. 132(1), 254(1)	132(1)	While hearing an appeal against an order of assessment, Tribunal cannot go into the question of validity or otherwise of any administrative decision for conducting search and seizure. CIT vs. Paras Rice Mills (2008) 15 DTR 262 (P&H)
Search & Seizure – S. 132(B)	132(B)	Appellant's assets were seized by the respondents after conducting a search under section 132(B). Repeated requests for release of the assets seized were not accepted. A Writ Petition filed by the appellant for release of the assets was also dismissed observing that there was estimated tax liability of approximately Rs. 10,00,000. Stand of the

		appellants essentially was that there is no power to retain any amount seized for the purpose of meeting estimated liability. Held, there are different stages under section 132(1). First stage is seizure, then comes adjudication on the non disclosure aspect and then determination relatable to section 132(8A). Lastly, the Order can be passed under section 132B. Power under Section 132(3) was revoked and was exercised at the initial stage for the purposes of verification of the source of funds lying in the bank account. Thereafter, when the assessee was unable to satisfactorily explain the source of these funds, the same were seized under a fresh warrant under section 132 (1) issued by the Director of Income Tax (Inv.), who duly recorded his satisfaction as provided under section 132(1)(c). An Authorized Officer acting under section 132(1)(iii) of the Act has full power and jurisdiction to seize cash balance lying in bank account as these would come within the meaning of "money" and/or "assets" as provided under section 132(1)(iii) of the Act. Further, amount seized has not become a part of the Consolidated Fund of India and is deposited in separate PD account of the concerned Commissioner and is held in the custody till final determination of the tax liability by the assessing officer for the relevant assessment years and that is permissible. As there is no challenge to the Order passed under section 132B of the Act no relief can be granted to the appellants Assessment to be completed within the time statutorily provided. KCC Software Ltd. vs. DIT 2008 (5) SCC 201.
Search & Seizure – Statement on Oath – S. 132(4) r.w.s 139(5)	132(4)	A letter written to the Assessing Officer by a partner of the firm admitting a higher amount of undisclosed income than the income disclosed u/s. 132(4) of the Act and also stating that the firm will file a revised return in accordance with the statement made by him, cannot be considered as a statement u/s. 132(4) of the Act. The court further held that the letter so filed by the partner cannot be treated as a revised return and cannot be used as a basis for making assessment. CCIT vs. & Anr. Pampapathi – (2008) 11 DTR 82 (Karn)
Search & Seizure – Validity – S. 132(1)	132(1)	As the assessee being a non trading corporation the existence of condition regarding possession of money, bullion, jewellery or other valuable article or thing is ruled out and there being no summons or notice which the assessee failed to respond, none of the condition prescribed u/s. 132(1) of the Act were satisfied and therefore the warrant of authorisation was quashed by the High Court. Suvidha Association vs. L.R. Meena, Addl. Director of Income Tax (Inv.) & Ors. (2008) 9 DTR 209 (Guj.)
Search & Seizure – Surcharge in case of search and seizure matter – S. 158BB, 113	158BB	The Supreme Court held that surcharge is leviable even in cases of block assessments under section 158BB. It further held that the proviso to section 113 inserted by the Finance Act 2002, is clarificatory in nature and therefore would not change the position prior to the insertion of the proviso. CIT vs. Suresh N. Gupta (2008) 297 ITR 322 (SC), 214 CTR 274.
Search and Seizure – Addition – Retraction of Statement – Ss. 132(4), 158BB	132(4), 158BB	Statement made in the course of search and seizure was retracted only after issue of summons, addition cannot be made merely on the basis of statement. CIT vs. K. Bhuvanendra and others (2008) 303 ITR 235 (Mad.)

Search And Seizure – Apportionment Of Seized Assets - Cash Seized – S. 132B, 158BC(D) ,234 B & 234C	132B	Assessee having requested the department to adjust the cash seized during the search against his tax liability. The department has to adjust the seized amount towards the advance tax etc from the date it was seized. Sudhakar M. Shetty vs. ACIT (2008) 10 DTR 173 (Mum.).
Search and Seizure – Block Assessment - surcharge – Rectification – Retrospective operation of law – S. 154	S. 154	Levy of surcharge debatable when assessing officer passed the order. Rectification is not permissible. After referring Supreme Court Suresh N Gupta (2008) 297 ITR 322. CIT vs. M. S. Agrawal (2009) 308 ITR 69 (Delhi)
Search And Seizure - Block Assessment – Limitation - Prohibitory Order - Last Panchanama - S. 132, 158BE	132, 158BE	Assessees premises having been completely searched on 29th July, 1997 when assets were inventorised and Panchanama prepared, limitation under section 158BE would be reckoned qua 29th July, 1997 and not qua 8th Sept., 1997 when the prohibitory order in respect of shares was revoked and second Panchanama was prepared as the second Panchanama could not be said to have been prepared in pursuance to warrant of authorization, hence, block assessment made on 30th Sept., was barred by limitation. Nandlal M. Gandhi vs. ACIT (2008) 13 DTR 35 (Mum.)(Trib.)(TM) / (2008) 118 TTJ 289 (Mum.) (TM) **Editorial Note:-** 1. See Smt. Krishna Verma vs. ACIT (2008) 113 ITD 655 (SB) 2. Special Bench is Constituted at Jodhpur in M/s. Shree Ram Lime Products Ltd. Jodhpur ITA No. 27/Ju/06 C.O. No. 37/Ju/06 (A/o. ITA No. 27/JDPR/06), Block A.Y. 1997-98 to 2003-04 "Whether on the facts and in the circumstances of the case the period of limitation for completion of the block assessment as per sec. 158BE read with explanation 2 is to be reckonwed from the end of the month in which `last Panchanama on the conclusion of search is drawn on the assessee or `last Panchanam of the last authorization even when it is not last Panchanama drawn on the assessee and on or more valid panchanamas are drawn on the assessee thereafter in execution of any former authorization."
Search and Seizure - Block Assessment – Limitation – S. 132, 158BE	S. 132, 158BE	Search of office assessee's office and business premises conducted on 12th Dec., 1995 same concluded n that very day. Cash seized prohibitory order passed and panchanama drawn was the last Panchanama evidencing conclusion of search for purposes of limitation under section 158BE and not Panchnamas drawn on further searches conducted on 19th Jan., 1996 / 7th Feb., 1996 on which dates no seizure took place. CIT vs. T.S. Chandrashekar Through LRs (2009) 17 DTR 194 (Kar.)
Search And Seizure – Block Assessment – Reassessment – S. 148, 158B(A)	148, 158B(A)	No jurisdiction to reopen a Block assessment under section 148. Cargo Clearing Agency (Gujarat) vs. Jt. CIT (2008) 307 ITR 1 (Guj.)
Search And Seizure - Block Assessment -	158BD	No satisfaction by the Assessing Officer of the person searched having been recorded to the effect that undisclosed income belonging to

Recording Of Satisfaction – S. 158BD		assessee was found during search and no material relating to such undisclosed income found during search having forwarded by the Assessing Officer of the person searched to the Assessing Officer of assessee, proceedings under section 158BD read with section 158BC against assessee on the basis of report of Addl. Director of IT (Inv.) were without jurisdiction. CIT vs. Dawn View Farms (P.) Ltd. (2008) 15 DTR 83 (Del.)
Search And Seizure - Block Assessment - S. 132A, 158BC		Jurisdiction to complete block assessment under section 158BC is conferred on the AO only on the physical handing over the books of accounts, assets, etc., requisitioned under section 132A to the IT authorities concerned. ACIT vs. Sonu Verma (2008) 13 DTR 257 (Asr.) (SB)
Search and Seizure - Block Assessment - S. 158BD	S. 158BD	Proceedings under section 158BD initiated after 19 months of completion of proceedings under section 158BC, cannot be sustained. There being no reference of any seized material relatable to assessee in the note for initiating proceedings under section 158BD, such proceedings were invalid. Bharat Bhusan Jain vs. ACIT (2009) 17 DTR 498 (Del.) (Trib.)
Search and Seizure – Block Assessment – Statement of Consultant – S. 158BC, 132(4)	158BC, 132(4)	Addition of undisclosed income could not be made in the hands of assessee solely on the basis of statement of its tax consultant, more so when the statement was not voluntary statement and has been retracted. Statement made by a third person at the time of survey or search of another concern could not be relied upon as he is not the controlling person of that concern and no corroborative evidence was found in that search. First Global Stock Broking (P) Ltd. vs. ACIT (2008) 4 DTR 172 (Mum.)
Search and Seizure - Block Assessment – Surcharge – Rectification - S. 113, 154	S. 113, 154	When Tribunal has passed the order, question about retrospective applicability of amendment made to Section 113, was debatable hence, impugned order of Tribunal did not require any interference. The revenue relied on the judgment of Supreme Court in CIT vs. Suresh N. Gupta (2008) 297 ITR 322 (SC). CIT vs. Kirti Kumar Shah (2008) 176 Taxman 29 (Raj.)
Search and Seizure – Block Assessment – Surcharge - S. 113	S. 113	In view of the fact that the proviso was introduced by the Finance Act, 2002, w.e.f. 1st June 2002, with prospective effect, and having regard to the principles of law that taxing statute should be contrues strictly and ordinarily should not be held to have any retrospective effect, the question as to whether the said proviso is clarificatory and / or curative in nature and retrospective is referred to be considered by a larger Bench. Case referred CIT vs. Suresh N. Gupta (2008) 214 CTR 274 (SC) / (2008) 297 ITR 322 (SC). CIT vs. Vatika Township (P) Ltd. (2009) 17 DTR 353 (SC) / (2009) 221 CTR 409 (SC) / www.itatonline.org
Search And Seizure - Block Assessment - Warrant In The Name Of Dead Person - Assessment Invalid – s. 158bc, 144	158BC, 144	Search warrant being issued in the name of dead person and panchanma also prepared in the name of dead person, the search and authorization invalid and void ab initio and therefore block assessment under section 158BC, read with section 144 in pursuance thereof is also invalid. CIT vs. Rakesh Kumar, Mukesh Kumar L/H of late Mohar Singh (2008) 13 DTR 209 (P& H)

Search and Seizure – Block Assessment – Presumptions – S. 132(4A)	132(4)	Both assessee and alleged payees having denied to have advanced or received any amount as shown to have changed hands as per the MOU found during search, no addition could be made in block assessment in the absence of any further corroborative facts, the presumptions under section 132 (4A) being a rebateable one. No question of law arose out of the order of the tribunal deleting the addition. CIT vs. Ved Prakash Choudhary (2008) 4 DTR 286 (Del.) / (2008) 218 CTR 99 (Del) / (2008) 305 ITR 245 (Del).
Search And Seizure – Limitation – S. 158BE	158BE	Panchnama dt. 3rd Jan., 2001, not showing that any search was conducted on that day and only depicting revocation of restraint order mentioned in Panchnama dt. 17th Nov., 2000, it is only the Panchnama dt. 17th Nov., 2000, which related to conclusion of search and relevant for computing limitation under section 158BE(1)(b), block assessment made on 30th Jan., 2003 was thus barred by limitation. CIT vs. S. K. Katyal (2008) 16 DTR 285 (Del.) Editorial Note: Nandlal M. Gandhi vs. ACIT (2008) 115 ITD 1 (Mum.)(TM) has also taken similar view.
Search And Seizure - Protective Assessment – S. 143(3), 158BA	143(3), 158BA	Income which was assessed as undisclosed income for the block period can not be assessed on protective basis in regular assessment under section 143 (3). CIT vs. Wipro Finance Ltd. (2008) 10 DTR 281 (Kar.) / (2008) 217 CTR 105 (Kar).
Search And Seizure – S. 158BB(1)(C)	158BB (1)(c)	Once the assessee has paid advance tax , income shown in beleted return filed after due date of search is not undisclosed income. CIT vs. Smt. Shoba Ramalingam (2008) 10 DTR 533 (Mad.).
Search and Seizure – Satisfaction – S. 158BD	S. 158BD	Provision of section 158BD does not indicate that satisfaction should be of same person occupying office and who has initiated proceedings under section 158BC against person searched, rather it has to be Assessing Officer having jurisdiction over person searched who has to record satisfaction that undisclosed income pertains to a third person who is not subjected to search and books of account and other documents have to be handed over to the Assessing Officer having jurisdiction over that person. In view of provision of section 147, which are held to be similar to provisions of section 158BD, initiation of proceedings under section 158BD beyond period of six years cannot be regarded as valid. Saroj Nursing Home vs. ACIT (2009) 116 ITD 311 (Luck.)
Search And Seizure - Statement - S. 132 (4) - Revised Return – S. 139(5)	132(4), 139(5)	A letter written by partner of assessee firm to department admitting undisclosed income higher that disclosed in statement under section 132 (4) ,with certain conditions and further stating that a revised return shall be filed accordingly is not a statement under section 132 (4) nor a revised return and can not be used as a basis for making assessment. CCIT vs. Pampapathi (2008) 11 DTR 82 (Kar.) / (2008) 218 CTR 590 (Kar).
Search and Seizure – Tribunal has power to examine validity of Search – S. 132(1)	132(1)	Tribunal had jurisdiction to go into the question as to whether the search was conducted consequent upon valid authorisation. CIT vs. Chandra Devi Soni (2008) 1 DTR 98 (Raj).

Service of notice – Date of issue is not date of service – S. 143(2)	143(2)	A notice was sent by speed post one day before the period of limitation was to expire, i.e., on 30-10-2002 and the Department contended that the notice may be deemed to served within the due time. The Hon'ble Court held that what is required by the statute is not merely the dispatch or issuance of notice but its actual service. CIT vs. Inderpal Malhotra (2008) 171 Taxman 359 (Delhi)
Service Of Notice – Re-Assessment – S. 148	148	Assessing officer assumes jurisdiction to complete assessment / reassessment only after service of a legal and valid notice in accordance with law and mere participation of assessee in proceedings cannot validate assessment proceedings. On the fact of the case the notice was served on a person at shop belonging to firm in which the assessee was partner. As the notice was not served on him, or any authorized representative, the assessment held to be void ab initio in absence of valid service of notice. Anil Kumar Goel vs. ITO (2008) 115 ITD 245 (Luck.)
Service of Notice – Registered Post – S. 282	282	Where notice is sent by registered post to the address given by the assessee and the notice is not received back unserved. The High Court held that notice was duly served as per s. 282 read with Order V of the Civil Procedure Code. CIT vs. Yamu Industries Ltd. [(2007) 201 Taxation 220 (Del)].
Service of Notice – S. 282	282	In absence of any evidence in the form of postal receipt to demonstrate that the notice u/s. 148 of the Act was actually sent by registered post and was actually served upon the assessee, the notice is deemed not to be served upon the assessee. CIT vs. Avtar Singh (2008) 5 DTR 55 (P&H)
Service of notice not served on proper person – assessment not valid – S. 147, 148	147, 148	Where revenue had not been able to produce any material to show that any notice under section 148 was served upon assessee before framing assessment under section 147, Tribunal was justified in annulling that assessment as in valid. CIT vs. Laxmi Narain (2008) 168 Taxman 128 (P&H) / (2008) 1 DTR 209 (P&H).
Set Off Of Losses - Capital Loss – S. 70	70	Capital loss computed from a source with indexation can be set–off from capital gain computed without indexation of another source. Mohanlal N. Shah (HUF) vs. ACIT (2008) 26 SOT 380 (Mum.) **Article for reference.** • The Hindu Succession (Amendment) Act 2005. - Daughter's right in coparcenary by M.L.Bhakta advocate & notary. (2008) 40 –B-BCAJ January 509. • Penalty.-Supreme court decision in Dharmendra Textile Processors – Does it change the law on section 271 (1) (c). By J.P.Shah, advocate Ahmedabad. (2008) 40 –B-BCAJ. January 2009 .p 505.
Settlement Commission – S. 245F	245F	During pendency of proceedings before the Settlement Commission, lower authorities cannot invoke provisions of s. 147/148, as Settlement Commission has exclusive jurisdiction to exercise powers and perform functions of Income Tax Authority. Vivek Nagpal vs. DCIT (2007) 165 Taxman 71 (Delhi).
SLP Against Ruling		Foster's Australia vs. CIT Source: www.itatonline.org

Of Aar- Not Maintainable		
Software Technology Park – Deduction – S. 10A	10A	The assessee was in business of development of computer software. Its three units were located in Software Technology Parks at Bangalore, Chennai and Pune. The assessee had claimed deduction 10A in respect of the profit of the undertaking established in Software Technology Park. It was held that (i) telecommunication charges which were reduced for ascertaining the export turnover were also not to be considered for the purposes of total turnover, as total turnover is the sum total of export turnover and domestic turnover (ii) loss suffered by one industrial undertaking need not be adjusted against the profit of the other industrial undertaking (iii) the amount equal to the adjustments made by the assessee to the arm's length price, while filing the return of income, was eligible for deduction. Gare Global Solutions Ltd. vs. ACIT, ITA Nos. 248 & 249 /Bang/2007, Bench – B, A. Ys. 2002 – 03 & 2003-04, dt. 27-11-2007 – BCAJ p. 395, Vol. 39-E, Part 4, January 2008.
Speculation – Loss - Share Broker – S. 73	S. 73	Where assessee a share broker, had incurred loss on trading transactions of shares entered into on its own Account, and said loss was to be treated as speculation loss as assessee would be deemed to be carrying on speculative business to extent of business of purchase and sale of shares of other companies with in meaning of Explanation to section 73. B. L. K. Securities (P) Ltd. vs. ITO (2009) 27 SOT 142 (Delhi)
Speculative Transaction – S. 43(5)	43(5)	As per the definition of speculative transaction, there has to be purchase or sale of any commodity, including stock and shares. As derivative trading did not involve any purchase and sale of shares, the loss on account of derivative could not be treated as loss on account of speculative transaction. DCIT vs. SSKI Investors Services Pvt. Ltd., ITA No. 3182/Mum/2004, Bench – J, A.Y. 2001-02, dt. 25-9-2007, BCAJ p. 151, Vol. 39-E, Part 2, November 2007.
Subsidy – Income – S. 4	4	Transport subsidy from State Govt. under the Transport Subsidy Scheme, 1971 of the Govt. of India against transfer cost of raw material and finished goods would be revenue receipt. Asstt. CIT vs. Steel Strips Ltd. (2007) [108 ITD 720 (Chd)].
Subsidy To Encourage The Setting Up Of Sugar Factories- Capital In Nature - S. 4	**4**	CIT vs. Ponni Sugars
Summons – Business –Inference by the Assessing Officer – S. 131	131	The question before the AO was whether the assessee is a trader or a commission agent. The AO summoned five parties who were in the state, but could not summon other 5 which were outside the State. The five parties within the State came and gave the evidence that the assessee is a commission agent. On the basis of the fact that the other five did not give any evidence the AO took the view that the assessee is a trader. The Supreme Court held that the fact that other five parties did not give any evidence would not allow the AO to draw the inference that the assessee is a trader and that the assessee could not be held responsible for the non appearance of the other 5 traders.

		Anish Ahmad and Sons vs. CIT (2008) 297 ITR 441 (SC), (2008) 214 CTR 457
Survey – Chartered Accountant's Office – S. 133	S. 133	Survey on Chartered Accountant's office held to be illegal and ordered return of impugned documents to the chartered accountants with in two weeks. U K. Mahapatra and Co. vs. ITO (2009) 308 ITR 133 (Orissa) / (2009) 221 CTR 328 (Orissa)
Survey – Powers of ITO (TDS) – S. 131	131	Prior to 1999, the ITO (TDS) was not empowered to issue notice u/s. 131 of the Act with respect to the T.D.S. return filed by the assessee. The power to issue notice u/s. 131 of the Act was only given to T.D.S. officials by the circular issued by C.B.D.T. in 1999. Accordingly, in absence of appropriate authority being given under the statute to the T.D.S. officials, action of the officer, to issue notice u/s. 131 of the Act was held to be without jurisdiction. CESC Ltd. & Anr. vs. I.T.O. (TDS) & Ors. [(2007) 201 Taxation 105 (Cal)].
Tax Deduction at Source – Deemed Dividend – S. 2(22)(e), 194, 201 & 201(1A)	S. 2(22)(e), 194, 201 & 201(1A)	Payment or advances to non–shareholder does not require TDS under section 194 and assessee cannot be held to be in default under section 201 so as to attract interest under section 201(1A). ANZ Reality (P) Ltd. vs. ITO (2009) 120 TTJ 142 (JP)
Tax Deduction at Source – S. 194A	194A	There is no obligation upon the person to deduct tax at source while paying compensation for agricultural land at any place including in an urban agglomeration as the section itself excludes agricultural land from its preview. Mysore Urban Development Authority & Ors. vs. ITO & Anr. – (2008) 11 DTR 331 (Karn)
Tax Deduction At Source – S. 195, 201, 2(47), 5(2), 9(1)	195	Assessee a non-resident company, acquiring shares of another non-resident company, HTIL (which held 67 percent shares in Indian Company HEL). The effect of which is transfer to assessee of a capital asset in India in the form of right to enter in to telecom business in India with controlling interest in a company situate in India. There was prima facie, a transfer of capital asset by HTIL to assessee giving rise to capital gains in the hands of HTIL, hence, show cause notice issued to the assessee seeking to treat the assessee as in default for failure to deduct tax at source while making payment to HTIL could not be said to be without jurisdiction so as to be quashed at the threshold by issue of a writ. Vodafone International Holdings B. V. vs. UOI (2008) 16 DTR 185 (Bom.)
Tax Deduction At Source – Salary – Perquisite – S. 17(2)(iii)(c), 192, 201(1), 201(1A) & 271C	17(2)(iii)(c)	Non transferable meals coupons distributed by the assessee company to its employees of the value of Rs. 50 per day which were usable only at specified eating joints not being taxable as perquisites in the hands of the employees in view of proviso to Rule 3(7)(iii) no default can be ascribed

		to the assessee for not deducting tax at source in respect of said meal coupons merely because some employees misused the facilities. Any expenditure incurred by employer for journey by the employee from residence to the office or other place of work and back is not to be regarded as taxable perquisite in the hands of the employee, even if the vehicle is owned by the employee and, therefore, assessee was not required to deduct tax in respect of reimbursement of conveyance expenses paid to the employees. CIT vs. Reliance Industries Ltd. (2008) 14 DTR 150 (Guj.)
TDS – Assessee in default – Limitation – Certificate – S. 201, 195(2)	201, 195(2)	An order under section 201, ought to be passed within four years, hence on the basis of show cause notice issued in October, 2002, assessee could not be treated in default for the period prior to 31st March, 1998. Assessee on the basis of a no objection certificate under section 195(2) obtained in respect of a particular payment could not contend that, it entertained a bonafide belief that it was not obliged to obtain such certificate under section 195(2), once again in respect of similar payment under another contract and hence could not treated to be in default. Mangalore Refinery & Petro Chemicals Ltd. vs. Dy. Director of IT (2008) 4 DTR 101 (Mum.)
TDS – Assessee in default – S. 201(1A)	201(1A)	Short-deduction of tax from salary income, assessee company having received intimation from the expatriate employees as regards the payments received by them from the other employer only in the month of March, 2000, assessee company was not on assessee in default on account of short-deduction of TDS for the financial year 1998-99. Further, performance incentive being dependent on the performance of the employer company in a given financial year and the payment of such incentive being uncertain, assessee company is not an assessee in default on account of short-deduction of tax relatable to the payment of performance incentive and thus, interest under section 201(1A) is not chargeable. CIT vs. Marubeni India (P) Ltd. (2007) 212 CTR 415 (Del.) / (2007) 294 ITR 157 (Del).
TDS – Contractor – S. 194C	194C	TDS on Composite contracts, consisting payments for supply of materials as well as payments for execution of civil work, erection, designing and commissioning, and which are divisible, though having common purchase order, has to be deducted only in respect of consideration attributable to civil work, as well as erection and payment towards supply of material, spare parts, freight and insurance has to be excluded. Haryana Power Generation Corpn. Ltd. vs. ITO (2007) 164 Taxman 64 (Delhi).
TDS – Credit for TDS – S. 199	199	Dividend income taxed in the hands of partner, once dividend income is assessed in the hands of assessee partner, proviso to s. 199 has no application and credit for TDS cannot be denied to the assessee partner. Yezdi Hirji Malegam & Ors. vs. CIT (2007) 213 CTR 161 (Bom.), (2007) 103 BLR 1900 (Bom) / (2008) 299 ITR 329 (Bom).
TDS – S. 194H	194H	Distribution incentive, early payment discount and bond expenses do not constitute commission so as to attract TDS under section 194H.

		Foster's India (P) Ltd. vs. ITO (2008) 117 TTJ 346 (Pune).
TDS - Technical Services – S. 194J	194J	Services rendered by MTNL and other telecommunication companies qua interconnection / port access do not involve any human interface and therefore, the same cannot be regarded as "technical services" as contemplated under section 194J and payments made by the assessee to them for the said services are not liable to TDS under section 194J. CIT vs. Bharati Cellular Ltd. (2008) 15 DTR 73 (Del.)
TDS on salary – S. 192	192	Tips paid by customers to regular employees of restaurant, which were being collected along with the bills, and were later on disposed to concerned employees, would not constitute as profit in lieu of salary and would not be liable for TDS, as only the payments received by employees from employer are considered as profit in lieu of salary. Nehru Place Hotels Ltd. vs. ITO (2008) 173 Taxman 88 (Delhi).
Technical services – S. 9(i)(vii)	9(i)(vii)	Assessee using internet bandwidth of one US party T for providing access to its subscribers and the payment was made to T – As there is no privity of contract between the customers of assessee and T, the court held that no technical services were provided by T to the assessee within the meaning of sec. 9(1)(vii) and the assessee need not deduct TDS from payments made to T. CIT vs. Esstel Comunicación (P) Ltd. (2008) 217 CTR (Del) 102.
Territorial Jurisdiction of High Court – S. 127	127	Jurisdiction in respect of the assessee having been transferred to Delhi lock, stock and barrel u/s. 127(2) and all the records of the assessee also having been transferred from Lucknow to Delhi, it is only the Delhi High Court that can entertain an appeal u/s. 260A directed against the order passed by the Tribunal at Lucknow. CIT vs. Sahara India Financial Corporation Ltd. (2007) 212 CTR 178 (Del.) / (2007) 294 ITR 363 (Del).
Transfer – Ss. 2(47), 45	2(47), 45	Conversion of property into stock-in-trade and property development agreement. No transfer took place on conversion of assessee's share in the HUF property into stock-in-trade of its proprietorship concern. Assessee having entered into an agreement with a builder whereby the builder was to erect a multi-storeyed building on the assessee's property in consideration of the latter allocating to the builder 50 per cent of its share, there was a transfer of property and capital gains were chargeable to tax. CIT vs. Ashok Kapur (HUF) (2007) 213 CTR 241 (Delhi) / (2007) 165 Taxman 569 (Delhi).
Transfer pricing - Opportunity of hearing - S. 92, 92CA, 92C	S. 92, 92CA, 92C	Provisions of sub-section (3) of section 92CA cast an obligation on TPO to afford a personal hearing to assessee before he proceeds to pass an order of determining of ALP in terms of said section whether assessee demands or not. TPO must refer the documents or materials available with the assessing officer in relation to international transaction in issue. Moser Baer India Ltd vs. Addl. CIT (2009) 176 Taxman 473 (Delhi)
Transfer Pricing – S. 92(C)	92(C)	a) Held that initial burden of proving international transaction carried out is at arm's length price is on an taxpayer. b) Non referral of question of determination of arm's length price to TPO by an A.O. under instruction No 3/23 dt 20.5.03 is only an procedural error.

		Ranbaxy Laboratories Ltd. vs. ACIT (2008) 167 Taxman 30 (Delhi).
Transfer Pricing – Computation of arm's length transactions – S. 92C	92(c)	(a) AO is not required to demonstrate avoidance of tax or existence of circumstances specified under clauses (a) to (d) to sub-s. (3) of s. 92C and the AO is also not required to hear assessee before making reference. (b) AO must have some material to justify reference. (c) Instructions of the CBDT to make reference where international transactions cross Rs. 5 crores in value. (d) Order of transfer pricing is not binding on the Assessing Officer but he must have some strong reasons not to accept such order. — Aztec Software and Technology Services Ltd. vs. Asstt. CIT [294 ITR 32 (AT) (SB)(Bang)].
Tribunal – Additional ground – S. 254	254	An additional ground can always be raised under section 254 before Tribunal if it involves a question of law, which emerges from facts on record in assessment proceedings, although same might not have been raised before Commissioner (Appeals). Avery Cycle Industries Ltd. vs. CIT (2007) 164 Taxman 429 (P & H) / (2007) 292 ITR 493 (P&H)
Tribunal – Power of Tribunal – S. 254	254	The Hon'ble High Court after considering the decision of Apex Court in the case of Goetze (India) Ltd. vs. CIT (2006) 284 ITR 323 (SC) held that Tribunal had power to allow deduction of expenditure to the assessee to which it was otherwise entitled even though no claim was made by the assessee in its return of income. CIT vs. Jai Parabolic Springs Ltd. (2008) 6 DTR 233 (Del.) / (2008) 172 Taxman 258 (Del).
TRIBUNAL - REMARKS AGAINST COUNSEL - S. 254(2)	254(2)	Self restraint and temperate language are virtues of a judicial or quasi-judicial authority. Judicial language does not use whip–lashing scathing or disparaging remarks. These are uncalled for deciding a lis. A presiding officer is expected to watch the forensic battle of wits from a higher pedestal rather than becoming part of din and dust of battle. With this word of caution, nothing needs to be said more in view of the fact that by the order impugned. Tribunal recalled the order, thus the remarks stand obliterated. The Tribunal ought not have made scathing remarks against counsel for the assessee. CIT vs. S. Kumar Tyres Mfg. Company (2008) 13 DTR 30 (MP)
Tribunal – Speaking order – Judicial propriety – S. 257	257	The revenue placed reliance upon the Bombay High Court decision but the Tribunal instead of dealing with the same referred to other co-ordinate Mumbai Bench decision which though contained reference to the Bombay High Court's decision. The Delhi High Court held that judicial propriety demands that when there was a judgment of a superior Court, that judgment should be considered by Tribunal and clear reasons should be given as to why that decision was distinguishable either in its own words or in words of co-ordinate Benches. The High Court held that merely mentioning decision without otherwise referring to the facts or the law laid down in that decision does not amount to considering the decision. The appeal stood remanded to the Tribunal for a fresh disposal on merits. CIT vs. Havell's (P) Ltd. (2007) 165 Taxman 510 (Delhi)
Tribunal Stay –	254(2A	The power to grant stay or interim relief being inherent or incidental is

Power to Grant Extended/Interim Stay – S. 254(2A)	)	not defeated by the provisos introduced u/s. 254(2A) by the Finance Act, 2007. The third proviso has to be read as a limitation on the power of the Tribunal to continue interim relief in case where the hearing of the appeal has been delayed for acts attributable to the assessee. The power of the Tribunal to continue interim relief is not overridden by the language of the third proviso to s. 254(2A). There would be power in the Tribunal to extend the period of stay on good cause being shown and on the Tribunal being satisfied that matter could not be heard and disposed of for reasons not attributable to the assessee. Narang Overseas (P) Ltd. vs. ITAT (2007) 165 Taxman 557 (Bom.) / (2007) 295 ITR 22 (Bom) / (2007) 211 CTR 524 (Bom).
Trucks on hire – Depreciation – S. 32	32	The assessee was in the business of timber trading but also occasionally gave its trucks for hire. On the Tribunal deciding that the assessee is eligible for higher rate of deduction, the high court held that it is a question of fact and therefore refused to interfere. The Supreme Court held that a question of law arose and that the High Court would have to decide as to whether the assessee was in the business of running of trucks on hire. CIT vs. Gupta Global Exim P. Ltd. (2005) 305 ITR 132 (SC) / (2008) 7 DTR 62 (SC) / 216 CTR 132 (SC) / 171 Taxman 473 (SC).
Undisclosed Income – Loose sheets – S. 28	28	The Supreme Court held that the fact of the actual sale price of the property, implication of the contradictory statement made by the seller of the property or whether reliance can be placed on the loose sheet recovered in the course of raid are all questions of fact and no therefore, no substantial question of law arises. The Supreme Court further held that quoting from an order of some authority, particularly a specialized one, cannot per se be faulted as this procedure can often help in making for brevity and precision. But to the extent that any borrowed words are used in a judgment, they must be acknowledged as such in the appropriate manner as a courtesy to the true authors. CIT vs. P. V. Kalyanasundaram (SC) [2007] 294 ITR 49 (SC), 212 CTR 97, 9 RC 577 / (2007) 164 Taxman 78 (SC).
Undisclosed investment – S. 69	69	No addition as unexplained investment u/s. 69 can be made on account of difference in valuation of stock, where there is a finding recorded by the Tribunal that the Assessing Officer had not pointed out any discrepancy in the quantity of stock hypothecated by the assessee with bank the discrepancy was only on account of valuation. CIT vs. Laxmi Engg. Industries (2008) 5 DTR 106 (Raj.)
Undisclosed Investment – S. 69	69	Where the finding of fact recorded by the CIT(A) that the report of the DVO was not reliable was not challenged by the Revenue authorities, addition made by the Assessing Officer to the income of the assessee on account of difference between the value of the property declared by the assessee and that estimated by the DVO was held not tenable at all. CIT vs. N.S. Bakshi (2008) 9 DTR 146 (P&H).
Unexplained Expenditure – S. 69C	69C	Burden is on the Revenue to show that the amount credited in the name of the assessee in the books of the third party constituted income of the assessee for the purpose of section 69C of the Act. Thus, if Revenue authorities failed to discharge this burden addition u/s. 69C was not

		called for. The High Court also held that the proviso to section 69 C of the Act w.e.f. 1-4-1999 is not retrospective and would not apply to earlier years. Krishna Textile vs. CIT – (2008) 11 DTR 217 (Guj).
Unexplained Expenditure – S. 69C	69C	During the search certain slips containing some jotting were found. It was explained by the assessee that jotting were just rough noting and not actual expenditure incurred by the assessee. During the assessment A.O. treated the amount jotted by the assessee as unexplained expenditure incurred by the assessee u/s. 69C of the Act, without making any inquiry as to actual incurring of expenses by assessee. On appeal High Court dismissing the appeal of the revenue held that as there was nothing on record to show that the expenditure was actually incurred by the assessee nor did the A.O. made any efforts to find out whether expenditure were actually incurred by the assessee. CIT vs. Lubtec India Ltd. [(2008) 202 Taxation in 484 (Del)].
Unexplained Investment – S. 68,69, 69B	68, 69, 68B	Where the assessee is not maintaining any books of account, section 68 will not be applicable, yet cash deposit in bank should be explained by assessee under section 69 or section 69B. Unless assessee by any clinching evidence, shows nature and source of money deposited in to bank account, same should be added as assesses's unexplained income. Manoj Aggrwal vs. Dy. CIT (2008) 113 ITD 377 (Delhi).
Unexplained Investment — S. 69B	69B	Addition cannot be made on account of unexplained investment in property only on the basis of stamp duty charged by the Sub-Registrar. ITO vs. Satyanarayan Agarwal (2007) 112 TTJ 717 (Jd.).
Unexplained investments – Ss. 69, 69A	69 & 69A	The assessee was engaged in construction business. Whether there could be any addition on account of DVO's report that the assessee had invested unexplained income. The High Court held that if the unexplained income in the investment was added, that would give rise to the cost of construction and the result would remain the same; i.e., "Zero". The said addition was made on the basis of DVO's report. Reference could be made to the DVO for the purpose of ss. 55(A), 131, 133(6) and 142(2) and not for the purpose of finding out the cost. CIT vs. Star Builders (2007) 294 ITR 338 (Guj.)
Valuation – Reference to Valuation Officer – S. 16A	16A	The assessee filed his return of wealth which was supported by valuation report of registered valuer. The Wealth Tax Officer during the assessment proceedings made addition to the wealth of the assessee without making reference to valuation cell u/s. 16A of the Wealth Tax Act. The High Court held that when the assessee's valuation of the property was supported by a report of the registered valuer, the WTO cannot evaluate property of the assessee by adopting his own formula without making a reference to the valuation cell. CWT vs. Raghunath Singh Thakur (2008) 6 DTR 56 (HP) / (2008) 216 CTR 248 (HP) / (2008) 304 ITR 268 (HP).
Valuation – S. 145	145	Where the assessee had valued the rejected goods lying as closing stock at market price on the basis of the quotation of a third party, in absence of any evidence with the Assessing Officer, he could not substitute the valuation of the goods with the price which the assessee realised

		subsequently on sale of these goods. Voltamp Transformers Ltd. vs. CIT (2008) 7 DTR 84 (Guj.) / (2008) 217 CTR 254 (Guj).
Valuation of Stock – Addition to opening stock – S. 145A	145A	Section 145A begins with a non obstante clause and therefore to give effect to sec. 145A, if there is a change in the opening stock as on March 31, 1999, there must necessarily be a corresponding adjustment made in the opening stock as on April 1, 1998. CIT vs. Mahavir Aluminium Ltd. (2008) 297 ITR 77 (Del.) / (2008) 214 CTR 45 (Del) / (2008) 168 Taxman 27 (Del).
Valuation of stock – S. 145A	145A	For the purpose of valuation of closing stock, section 145A of the Act provides that only taxes duties, cess or fees actually paid by the assessee to bring the goods to place of its location would form part of the value stock. Accordingly, there is no justification on the part of the Assessing Officer to add excise duty to the price of the raw material, etc while computing the value of goods in closing stock, as the goods had not left the premises of the assessee. ACIT vs. D & H Secheron Electrodes P. Ltd. (2008) 5 DTR 279 (MP) / (1997) 141 CTR 335 (MP) / (1998) 233 ITR 463 (MP) / 99 Taxman 460 (MP).
Valuation of the closing stock – S. 145	145	The Supreme Court dismissed the review petition against the order in the case of CIT vs Hindustan Zinc Ltd. 291 ITR 391, wherein it had held that the closing stock is to be valued at the cost or the market price, whichever is lower. And, that the assessee was not right in taking the value of the closing stock as per the London Metal Exchange price and not as per the domestic net realizable price. Hindustan Zinc Ltd. vs. CIT [2007] 295 ITR 453 (SC)
VDIS 1997		Even when entry has been made in books of account of assessee as required by Voluntary Disclosure of Income Scheme (VDIS) 1997, section 68 of Income Tax Act, can be invoked when declared asset is sold later and sale proceeds are credited in books of account. Manoj Aggarwal vs. Dy. CIT (2008) 113 ITD 377 (Delhi) (SB).
Wealth Tax — Business asset – Exemption – S. 40(3)(iv) of Finance Act, 1983	40(3)(iv)	Building under construction admittedly not used by assessee for purpose of business would not fall in the exception clause provided in s. 40(3)(iv) of the Finance Act, 1983, hence could not be excluded from the ambit of chargeable asset under that section. CWT vs. Cadmach Machinery Co. (P) Ltd. (2007) 212 CTR 285 (Guj.) / (2007) 295 ITR 307 (Guj).
Wealth Tax - Asset - Building – Stock-in-trade - S. 2(ea)(1)	S. 2(ea)(1)	Building constructed by assessee, a builder and given on rent to a party pending registration and clearance of agreement for sale of the property to the same party constituted stock in trade of the assessee and therefore, it cannot be included in assets as defined in section 2 (ea). Dy. CWT vs. Brilliant Estate Ltd. (2009) 17 DTR 406 (Ind.)(Trib.)
Wealth tax – Belonging to assessee – S. 4(8)(b) r.w.s. 269UA(f)(1)	4(8)(b)	Lease of immovable property for less than twelve years, shall not affect the legal ownership, hence, shall be liable to Wealth Tax. Voltas Ltd. vs. ACWT (2008) 1 DTR 1 (Mum.) (SB).