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Final Course Paper-7: Direct Tax Laws

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CA FINAL - PAPER 7 - DIRECT TAX LAWS

Decisions rendered by the Apex Court and High Courts constitute a significant component of income-tax law, since they help in appreciating the interpretation of the various provisions of income-tax law by the judiciary. In this capsule, an attempt has been made to capture select significant Supreme Court and High Court rulings in income-tax law pronounced during the last decade. The capsule is divided chapter-wise to facilitate easy co-relation with the relevant concepts discussed in the parallel chapter of the Study Material. For detailed reading of these cases, you may refer to the November, 2020 edition of the Study Material of Final Paper 7 Direct Tax Laws and International Taxation, relevant for May, 2021 and November, 2021 examinations.

OVERVIEW OF SELECT SIGNIFICANT COURT RULINGS

Sl. No.	Case Law	
	Chapter 1: Basic Concepts	
1.	***CIT v. Saurashtra Cement Ltd. (2010) 325 ITR 422 (SC)***	
	Issue	**Decision**
	What is the nature of liquidated damages received by a company from the supplier of plant for failure to supply machinery to the company within the stipulated time – a capital receipt or a revenue receipt?	The damages are directly and intimately linked with the procurement of a capital asset i.e., the cement plant, which lead to delay in coming into existence of the profit-making apparatus. It was not a receipt in the course of profit earning process. Therefore, **the amount received by the assessee towards compensation for sterilisation of the profit earning source, is not in the ordinary course of business, hence it is a capital receipt in the hands of the assessee.**
	Chapter 3: Incomes which do not form part of Total Income	
2	***CIT v. HCL Technologies Limited (2018) 404 ITR 719 (SC)***	
	Issue	**Decision**
	Can expenditure incurred in foreign exchange for provision of technical services outside India, which is deductible for computing export turnover, be excluded from total turnover also for the purpose of computing deduction u/s 10AA?	Deduction u/s 10AA is based on the profit from export business, thus, expenses excluded from "export turnover" must also be excluded from "total turnover", since one of the components of "total turnover" is export turnover. Expenses incurred in foreign exchange for providing technical services outside India are thus, to be excluded from total turnover also. If deductions in respect of freight, telecommunication charges and insurance attributable to delivery of articles, things etc. or expenditure incurred in foreign exchange in rendering of services outside India are allowed only against export turnover but not from the total turnover for computing deduction u/s 10AA, then, it would give rise to inadvertent, unlawful, meaningless and illogical results causing grave injustice, which could have never have been the intent of the Legislature. Hence, such **expenditure incurred in foreign exchange for providing technical services outside India is deductible from total turnover also.**
3	***CIT v. Kribhco (2012) 349 ITR 0618 (Delhi)***	
	Issue	**Decision**
	Is section 14A applicable in respect of deductions, which are permissible and allowed under Chapter VI-A?	Deductions under Chapter VIA are different from the exclusions/exemptions provided under Chapter III. Section 14A is applicable only if an income is not included in the total income as per the provisions of Chapter III of the Income-tax Act, 1961. Therefore, **no disallowance can be made u/s 14A in respect of income included in total income in respect of which deduction is allowable u/s 80C to 80U.**
	Chapter 4: Salaries	
4	***CIT v. Shankar Krishnan (2012) 349 ITR 0685 (Bom)***	
	Issue	**Decision**
	Can notional interest on security deposit given to the landlord in respect of residential premises taken on rent by the employer and provided to the employee, be included in the perquisite value of rent-free accommodation given to the employee?	The **notional interest on the security deposit given by the employer to the landlord cannot be included in valuation of the perquisite, since the perquisite value has to be computed as per Rule 3**; and the said Rule does not require addition of such notional interest. Thus, the perquisite value of the residential accommodation provided by the employer would be the actual amount of lease rental paid or payable by the employer or 15% of salary, whichever is lower.

<table>
<tr><th>Sl. No.</th><th colspan="2">Case Law</th></tr>
<tr><td></td><td colspan="2">Chapter 5: Income from House Property</td></tr>
<tr><td>5</td><td colspan="2">Chennai Properties and Investments Ltd. v. CIT (2015) 373 ITR 673 (SC);
Rayala Corporation (P) Ltd. v. Asstt. CIT (2016) 386 ITR 500 (SC); and
Raj Dadarkar and Associates v. ACIT (2017) 394 ITR 592 (SC)</td></tr>
<tr><td></td><td>Issue</td><td>Decision</td></tr>
<tr><td></td><td>Would rental income from the business of leasing out properties be taxable under the head “Income from house property” or “Profits and gains from business or profession”?</td><td>In Chennai Properties and Investments Ltd. v. CIT (2015) 373 ITR 673, the Supreme Court observed that holding of the properties and earning income by letting out of these properties is the main objective of the company. Further, in the return of income filed by the company and accepted by the Assessing Officer, the entire income of the company comprised of income from letting out of such properties. The Supreme Court, accordingly, held that such income was taxable as business income. Likewise, in Rayala Corporation (P) Ltd. v. Asst. CIT (2016) 386 ITR 500, the Supreme Court noted that the assessee was engaged only in the business of renting its properties and earning rental income therefrom and accordingly, held that such income was taxable as business income. However, in Raj Dadarkar and Associates v. ACIT (2017) 394 ITR 592, on account of lack of sufficient material to prove that substantial income of the assessee was from letting out of property, the Supreme Court held that the rental income has to be assessed as “Income from house property”.</td></tr>
<tr><td>6</td><td colspan="2">CIT v. NDR Warehousing P Ltd (2015) 372 ITR 690 (Mad)</td></tr>
<tr><td></td><td>Issue</td><td>Decision</td></tr>
<tr><td></td><td>Under what head of income should income from letting out of godowns and provision of warehousing services be subject to tax - “Income from house property” or “Profits and gains of business or profession”?</td><td>The assessee’s activity was not merely letting out of warehouses but storage of goods with provision of several auxiliary services such as pest control, rodent control and fumigation service to prevent the goods stored from being affected by vagaries of moisture and temperature. Further, service of security and protection was also provided to the goods stored.
The objects clause of the memorandum of the assessee as also the individual aspects of the business clearly point out that it was a case of warehousing business, and, therefore, the income would fall under the head “Profits and gains of business or profession”.</td></tr>
<tr><td>7</td><td colspan="2">CIT v. Hariprasad Bhojnagarwala (2012) 342 ITR 69 (Guj) (Full Bench)</td></tr>
<tr><td></td><td>Issue</td><td>Decision</td></tr>
<tr><td></td><td>Can benefit of self-occupation of house property u/s 23(2) be denied to a HUF on the ground that it, being a fictional entity, cannot occupy a house property?</td><td>HUF is a group of individuals related to each other i.e., a family comprising of a group of natural persons. The said family can reside in the house, which belongs to the HUF. Since a HUF cannot consist of artificial persons, it cannot be said to be a fictional entity. Therefore, the HUF is entitled to claim benefit of self-occupation of house property u/s 23(2).</td></tr>
<tr><td></td><td colspan="2">Chapter 6: Profits and Gains from Business or Profession</td></tr>
<tr><td>8</td><td colspan="2">National Co-operative Development Corporation v. CIT (2020) 427 ITR 288 (SC)</td></tr>
<tr><td></td><td>Issue</td><td>Decision</td></tr>
<tr><td></td><td>Is source of funds from which expenditure is incurred for the purpose of business relevant for the purpose of allowability of deduction u/s 37(1)?</td><td>In case of an assessee carrying on business, it is relevant to see whether an outlay constitutes an expenditure “for the purpose of business” as used in section 37(1), for the purpose of claiming deduction thereunder. The source of funds from which the expenditure is made is <u>not</u> relevant. Every application of income towards the business objective of the assessee is a business expenditure. There can be an amount treated as a capital receipt while the same amount expended may be a revenue expenditure.</td></tr>
<tr><td>9</td><td colspan="2">I.C.D.S. Ltd. v. CIT (2013) 350 ITR 527 (SC)</td></tr>
<tr><td></td><td>Issue</td><td>Decision</td></tr>
<tr><td></td><td>Can depreciation on leased vehicles be denied to the lessor on the ground that the vehicles are registered in the name of the lessee and that the lessor is not the actual user of the vehicles?</td><td>Section 32 imposes a twin requirement of “ownership” and “usage for business” as conditions for claim of depreciation thereunder. As far as usage of the asset is concerned, the section requires that the asset must be used in the course of business. It does not mandate actual usage by the assessee itself. In this case, the assessee did use the vehicles in the course of its leasing business. Hence, this requirement of section 32 has been fulfilled, notwithstanding the fact that the assessee was not the actual user of the vehicles.
As long as the assessee-lessor has a right to retain the legal title against the rest of the world, he would be the owner of the asset in the eyes of law. In this regard, the following provisions of the lease agreement are noteworthy –
• The assessee is the exclusive owner of the vehicle at all points of time;
• The assessee is empowered to repossess the vehicle, in case the lessee committed a default;
• At the end of the lease period, the lessee was obliged to return the vehicle to the assessee;
• The assessee had a right of inspection of the vehicle at all times.
The proof of ownership lies in the lease agreement itself, which clearly points in favour of the assessee. The assessee-lessor was, therefore, entitled to claim depreciation in respect of vehicles leased out since it has satisfied both the requirements of section 32, namely, ownership of the vehicles and its usage in the course of business.</td></tr>
</table>

Sl. No.	Case Law	
10	***Shasun Chemicals & Drugs Ltd v. CIT (2016) 388 ITR 1 (SC)***	
	Issue	**Decision**
	In a case where bonus due to employees is paid to a trust and such amount is subsequently paid to the employees before the stipulated due date, would the same be allowable u/s 36(1)(ii) while computing business income?	The embargo contained in section 43B(b) or section 40A(9) does not come in the way of the assessee's claim, since the bonus is ultimately paid to the employees before the due date as per the statutory requirement. Therefore, the payment in respect of bonus is allowable as deduction.
11	***Berger Paints India Ltd v. CIT (2017) 393 ITR 113 (SC)***	
	Issue	**Decision**
	Whether "premium" on subscribed share capital is "capital employed in the business of the company" u/s 35D to be eligible for a deduction?	Share premium collected by the assessee on its subscribed share capital could not be part of "capital employed in the business of the company" for the purpose of section 35D(3)(b). If it were the intention of the legislature to treat share premium as being "capital employed in the business of the company", it would have been explicitly mentioned. Moreover, Sl. No. IV(i) in Form MGT- 7 read with section 92 of the Companies Act, 2013 dealing with capital structure of the company provides the break-up of "issued share capital" and "subscribed share capital" which does not include share premium at the time of subscription. **Hence, in the absence of the reference in section 35D, share premium is not a part of the capital employed.** Also, section 52 of the Companies Act, 2013 requires a company to transfer the premium amount to be kept in a separate account called "securities premium account". **The assessee is, therefore, not entitled to claim deduction u/s 35D in relation to the premium amount received from shareholders at the time of share subscription.**
12	***Palam Gas Service v. CIT (2017) 394 ITR 300 (SC)***	
	Issue	**Decision**
	Is section 40(a)(ia) attracted when amount is not 'payable' to a sub-contractor but has been actually paid?	The obligation to deduct tax at source is mandatory and applicable irrespective of the method of accounting adopted. If the assessee follows the mercantile system of accounting, then, the moment the amount was credited to the account of the payee on accrual of liability, tax was required to be deducted at source. If the assessee follows cash system of accounting, then, tax is required to be deducted at source at the time of making payment. **Accordingly, section 40(a)(ia) would be attracted for failure to deduct tax in both cases i.e., when the amount is payable or when the amount is paid, as the case may be, depending on the system of accounting followed by the assessee.**
13	***CIT v. BSES Yamuna Powers Ltd (2013) 358 ITR 47 (Delhi)*** ***CIT v. Orient Ceramics and Industries Ltd. (2013) 358 ITR 0049 (Delhi)*** ***Federal Bank Ltd. v. ACIT (2011) 332 ITR 319 (Kerala)***	
	Issue	**Decision**
	What is the eligible rate of depreciation in respect of computer accessories, peripherals and UPS under the Income-tax Act, 1961?	**Computer accessories and peripherals such as printers, scanners and server etc. form an integral part of the computer system and they cannot be used without the computer.** Since they are part of the computer system, **they would be eligible for depreciation at the higher rate of 40% applicable to computers including computer software.** **Depreciation on UPS is allowable@40%,** being the eligible rate of depreciation on computers including computer software, and not at the general rate of 15% applicable to plant and machinery.
	Can EPABX and mobile phones be treated as computers to be entitled to higher depreciation?	**EPABX and mobile phones are not computers and therefore, are not entitled to higher depreciation@40%.**
14	***CIT v. ITC Hotels Ltd. (2011) 334 ITR 109 (Kar.)***	
	Issue	**Decision**
	Would the expenditure incurred on issue and collection of convertible debentures be treated as revenue expenditure or capital expenditure?	The expenditure incurred on the issue and collection of debentures would be treated as revenue expenditure even in case of convertible debentures, i.e., the debentures which had to be converted into shares at a later date.

Sl. No.	Case Law	
15	***CIT v. Priya Village Roadshows Ltd. (2011) 332 ITR 594 (Delhi)***	
	Issue	**Decision**
	Would expenditure incurred on feasibility study conducted for examining proposals for technological advancement relating to the existing business be classified as a revenue expenditure, where the project was abandoned without creating a new asset?	Since the feasibility studies were conducted by the assessee for the existing business with a common administration and common fund and the studies were abandoned without creating a new asset, the expenses were of revenue nature.
16	***Confederation of Indian Pharmaceutical Industry (SSI) v. CBDT (2013) 353 ITR 388 (H.P.)***	
	Issue	**Decision**
	Is Circular No. 5/2012 dated 01.08.2012 disallowing the expenditure incurred on freebies provided by pharmaceutical companies to medical practitioners, in line with *Explanation* to section 37(1), which disallows expenditure which is prohibited by law?	The CBDT, considering the fact that the claim of any expense incurred in providing freebies to medical practitioners is in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, has, vide *Circular No.5/2012 dated 1.8.2012*, clarified that the expenditure so incurred shall be inadmissible u/s 37(1). As per *Explanation* to section 37(1), it is clear that any expenditure incurred by an assessee for any purpose which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession. The sum and substance of the circular is also the same. Therefore, **the circular is totally in line with the *Explanation* to section 37(1).**
17	***CIT v. Kap Scan and Diagnostic Centre P. Ltd. (2012) 344 ITR 476 (P&H)***	
	Issue	**Decision**
	Can the commission paid to doctors by a diagnostic centre for referring patients for diagnosis be allowed as a business expenditure u/s 37 or would it be treated as illegal and against public policy to attract disallowance?	As per the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, no physician shall give, solicit, receive, or offer to give, solicit or receive, any gift, gratuity, commission or bonus in consideration of a return for referring any patient for medical treatment. The demanding as well as paying of such commission is bad in law. It is not a fair practice and is opposed to public policy and should be discouraged. Thus, **the commission paid to doctors for referring patients for diagnosis is not allowable as business expenditure.**
18	***Shanti Bhushan v. CIT (2011) 336 ITR 26 (Delhi)***	
	Issue	**Decision**
	Can the expenditure incurred on heart surgery of an assessee, being a lawyer by profession, be allowed as business expenditure u/s 31, by treating it as current repairs considering heart as plant and machinery, or u/s 37, by treating it as expenditure incurred wholly and exclusively for the purpose of business or profession?	Though the definition of "plant" as per the provisions of section 43(3) is inclusive in nature, such plant must have been used as a business tool which is not true in case of heart. Therefore, the **heart cannot be said to be plant for the business or profession of the assessee. Therefore, the expenditure on heart surgery is not allowable as repairs to plant u/s 31.** Also, **there is no direct nexus between the expenses incurred by the assessee on the heart surgery and his efficiency in the professional field. Therefore, the claim for allowing the said expenditure u/s 37 is also not tenable.** Hence, the heart surgery expenses shall **not** be allowed as a business expenditure of the assessee under the Income-tax Act, 1961.
19	***CIT v. Neelavathi & Others (2010) 322 ITR 643 (Karn)***	
	Issue	**Decision**
	Can payment to police personnel and gundas to keep away from the cinema theatres run by the assessee be allowed as deduction?	Any payment made to the police illegally amounts to bribe and such illegal gratification cannot be considered as an allowable deduction. Similarly, any payment to a gunda as a precautionary measure so that he shall not cause any disturbance in the theatre run by the assessee is an illegal payment for which no deduction is allowable under the Act.
20	***Millennia Developers (P) Ltd. v. DCIT (2010) 322 ITR 401 (Karn)***	
	Issue	**Decision**
	Is the amount paid by a construction company as regularization fee for violating building bye-laws allowable as deduction?	The assessee, a private limited company carrying on business activity as a developer and builder, claimed the amount paid by way of regularization fee for the deviations made while constructing a structure and for violating the plan sanctioned in terms of the building bye-laws, approved by the municipal authorities as per the provisions of the Karnataka Municipal Corporations Act, 1976. As per the provisions of the Karnataka Municipal Corporations Act, 1976, **the amount paid to compound an offence is obviously a penalty and hence, does not qualify for deduction u/s 37.** Merely describing the payment as a compounding fee would not alter the character of the payment.

Sl. No.	Case Law	
21	***CIT v. Maruti Suzuki India Limited (2018) 407 ITR 165 (Delhi)***	
	Issue	**Decision**
	Can payments made by an assessee to a non-resident agent who does not have any income assessable in India be disallowed u/s 40(a)(i) for non-deduction of tax at source on the ground that no application was made by the assessee u/s 195(2) for making deduction of tax at source at Nil rate?	The non-resident agent who operated outside India did not have any income arising in India. Accordingly, **the commission earned by a non-resident agent who was in the business of selling Indian goods abroad, did not accrue or arise in India, and hence, no tax was deductible on such commission payment to a non-resident agent.** Since the assessee has made payment to a non-resident agent and such income is not chargeable to tax in India, section 40(a)(i) could not be invoked to disallow deduction of such payment for non-deduction of tax at source while computing the business income of the assessee.
22	***CIT v. Great City Manufacturing Co. (2013) 351 ITR 156 (All)***	
	Issue	**Decision**
	Can remuneration paid to working partners as per the partnership deed be considered as unreasonable and excessive for attracting disallowance u/s 40A(2)(a), even though the same is within the statutory limit prescribed u/s 40(b)(v)?	**Section 40(b)(v) prescribes the limit of remuneration to working partners, and deduction is allowable up to such limit while computing the business income. If the remuneration paid is within the ceiling limit provided u/s 40(b)(v), then, recourse to provisions of section 40A(2)(a) cannot be taken.** The Assessing Officer is only required to ensure that the remuneration is paid to the working partners mentioned in the partnership deed, the terms and conditions of the partnership deed provide for payment of remuneration to the working partners and the remuneration is within the limits prescribed u/s 40(b)(v). If these conditions are complied with, then, the Assessing Officer cannot disallow any part of the remuneration on the ground that it is excessive by invoking the provisions of section 40A(2)(a).
	Chapter 7: Capital Gains	
23	***Seshasayee Steels P. Ltd. v. ACIT (2020) 421 ITR 46 (SC)***	
	Issue	**Decision**
	Can any transaction which enables the enjoyment of immovable property be considered as enjoyment as a purported owner thereof for being treated as a "transfer" of a capital asset u/s 2(47)(vi) and levy of tax on capital gains arising therefrom?	Any transaction which has the effect of transferring or enabling the enjoyment of any immovable property would come within the of purview u/s 2(47)(vi). **Section 2(47)(vi) appears to be to bring within its tax net, a *de facto* transfer of any immovable property. The expression 'enabling the enjoyment of' takes colour from the earlier expression 'transferring', so that it is clear that any transaction which enables the enjoyment of immovable property must be enjoyment as a purported owner thereof.** The idea is to bring within the tax net, transactions, where, though title may not be transferred in law, there is, in substance, a transfer of title in fact. In this case, the assessee's rights in the immovable property were extinguished on the receipt of the last cheque. Further, the compromise deed could be stated to be a transaction which had the effect of transferring the immovable property in question Accordingly, the transaction fell u/s 2(47)(ii) and (vi). Hence, it is a transfer in relation to the capital asset and capital gains tax liability would be attracted.
24	***Balakrishnan v. Union of India & Others (2017) 391 ITR 178 (SC)***	
	Issue	**Decision**
	Would receipt of higher compensation after notification of compulsory acquisition change the character of transaction into a voluntary sale, so as to deny exemption u/s 10(37)(iii)?	When proceedings were initiated under the Land Acquisition Act, 1894, even if the compensation is negotiated and fixed, it would continue to remain as compulsory acquisition. **Merely because the compensation amount is agreed upon, the character of acquisition will not change from compulsory acquisition to a voluntary sale.** The claim of exemption from capital gains u/s 10(37)(iii) is, therefore, tenable in law.
25	***CIT v. V.S. Dempo Company Ltd (2016) 387 ITR 354 (SC)***	
	Issue	**Decision**
	In a case where a depreciable asset (building) held for more than 24 months is transferred, can benefit of exemption u/s 54EC be claimed, if the capital gains on sale of such asset are reinvested in long-term specified assets within the specified time?	The assessee cannot be denied exemption u/s 54EC, because firstly, there is nothing in section 50 to suggest that the fiction created therein is not restricted to only sections 48 and 49. Secondly, fiction created by the legislature has to be confined for the purpose for which is created. Thirdly, **section 54EC does not make any distinction between depreciable and non-depreciable asset for the purpose of re-investment of capital gains in long term specified assets for availing the exemption thereunder.** Further, section 54EC specifically provides that when the capital gain arising on the transfer a long-term capital asset (being land or building or both) is invested or deposited in long-term specified assets, the assessee shall not be subject to capital gains to that extent. Therefore, the exemption u/s 54EC cannot be denied to the assessee on account of the fiction created in section 50.

Sl. No.	Case Law	
26	***Fibre Boards (P) Ltd v. CIT (2015) 376 ITR 596 (SC)***	
	Issue	**Decision**
	Can advance given for purchase of land, building, plant and machinery tantamount to utilization of capital gain for purchase and acquisition of new machinery or plant and building or land, for claim of exemption u/s 54G?	For the purpose of availing exemption, all that was required for the assessee is to "utilise" the amount of capital gain for purchase and acquisition of new machinery or plant and building or land. **Since the entire amount of capital gain, in this case, was utilised by the assessee by way of advance for acquisition of land, building, plant and machinery, the assessee is entitled to avail exemption/deduction u/s 54G.**
27	***CIT v. Aditya Kumar Jajodia (2018) 407 ITR 107 (Cal)***	
	Issue	**Decision**
	Can the amount incurred by the assessee towards perfecting title of property acquired through will, for making further sale, be included in the cost of acquisition for computing capital gains?	The assessee had inherited the immovable property under a will and the **costs incurred by him for perfection of the title from perpetual leasehold rights to the complete ownership had to be regarded as a cost of acquisition** within the meaning of sections 48 and 55, as the assessee was transferring the complete ownership rights to the transferee, and not the leasehold rights.
28	***CIT v. Manjula J. Shah (2013) 355 ITR 474 (Bom)***	
	Issue	**Decision**
	Would indexation benefit in respect of the gifted asset apply from the year in which the asset was first held by the assessee or from the year in which the same was first acquired by the previous owner?	**The indexed cost of acquisition in case of gifted asset has to be computed with reference to the year in which the previous owner first held the asset and not the year in which the assessee became the owner of the asset.**
29	***CIT v. Gurnam Singh (2010) 327 ITR 278 (P&H)***	
	Issue	**Decision**
	Can exemption u/s 54B be denied solely on the ground that the new agricultural land purchased is not wholly owned by the assessee, as the assessee's son is a co-owner as per the sale deed?	The agricultural land sold belonged to the assessee and the sale proceeds were also used for purchasing agricultural land. The possession of the said land was also taken by the assessee. **Merely because the assessee's son was shown in the sale deed as co-owner, deduction u/s 54B cannot be denied.** Therefore, the assessee was entitled to deduction u/s 54B.
30	***CIT v. Kamal Wahal (2013) 351 ITR 4 (Delhi)***	
	Issue	**Decision**
	Can exemption u/s 54F be denied solely on the ground that the new residential house is purchased by the assessee exclusively in the name of his wife?	For the purpose of section 54F, a new residential house need not necessarily be purchased by the assessee in his own name nor is it necessary that it should be purchased exclusively in his name. Having regard to the rule of purposive construction and the object of enactment of section 54F, **the assessee is entitled to claim exemption u/s 54F in respect of utilisation of sale proceeds of capital asset for investment in residential house property in the name of his wife.**
31	***CIT v. Ravinder Kumar Arora (2012) 342 ITR 38 (Delhi)***	
	Issue	**Decision**
	In case of a house property registered in joint names, can exemption u/s 54F be allowed fully to the co-owner who has paid whole of the purchase consideration of the house property or will it be restricted to his share in the house property?	The inclusion of his wife's name in the sale deed was just to avoid any litigation after his death. All the funds invested in the said house were provided by the assessee, including the stamp duty and corporation tax paid at the time of the registration of the sale deed of the said house. This fact was also clearly evident from the bank statement of the assessee. **Section 54F mandates that the house should be purchased by the assessee but it does not stipulate that the house should be purchased only in the name of the assessee**. In this case, the house was purchased by the assessee in his name and his wife's name was also included additionally. Therefore, the conditions stipulated in section 54F stand fulfilled and the entire exemption claimed in respect of the purchase price of the house property shall be allowed to the assessee.

Sl. No.	Case Law	
32	***CIT v. Sambandam Udaykumar (2012) 345 ITR 389 (Karn)***	
	Issue	**Decision**
	Can exemption u/s 54F be denied to an assessee in respect of investment made in construction of a residential house, on the ground that the construction was not completed within 3 years after the date on which transfer took place, on account of pendency of certain finishing work like flooring, electrical fittings, fittings of door shutter etc.?	The condition precedent for claiming the benefit u/s 54F is that capital gains realised from sale of capital asset should have been invested either in purchasing a residential house or in constructing a residential house within the stipulated period. If the assessee has invested the money in the construction of a residential house, merely because the construction was not completed in all respects and possession could not be taken within the stipulated period, would not disentitle him from claiming exemption u/s 54F. In fact, in this case, **the assessee has taken possession of the residential building and is living in the said premises despite the pendency of flooring work, electricity work, fitting of door and window shutters.** Therefore, **the assessee is entitled to exemption u/s 54F** in respect of the amount invested in construction within the prescribed period.
33	***Hindustan Unilever Ltd. v. DCIT (2010) 325 ITR 102 (Bom)***	
	Issue	**Decision**
	Can exemption u/s 54EC be denied on account of the bonds being issued after six months of the date of transfer even though the payment for the bonds was made by the assessee within the six-month period?	In order to avail the exemption u/s 54EC, the capital gains have to be invested in a long-term specified asset within a period of six months from the date of transfer. **Where the assessee has made the payment within the six month period, and the same is reflected in the bank account and a receipt has been issued as on that date, exemption u/s 54EC cannot be denied** merely because the bond was issued after the expiry of the six month period or the date of allotment specified therein was after the expiry of the six month period.
34	***Principal CIT v. Gujarat State Fertilizers and Chemicals Limited (2018) 409 ITR 378 (Guj)***	
	Issue	**Decision**
	Would sale of fertilizer bonds (issued in lieu of government subsidy) at loss be treated as a business loss or a loss under the head "Capital gains"?	Fertilizer subsidy given to an assessee to compensate the loss on sale of fertilisers should be treated as business income of the assessee. Due to cash crunch, the Government of India had discharged its dues of paying the subsidy by issue of fertiliser bonds. These bonds are saleable in the open market and the prices of such bonds are varying. In this case also, the assessee received fertilizer bonds (in lieu of subsidy) which were sold at a loss in the open market. Since the subsidy would have been treated as business income, **loss on sale of fertiliser bonds issued is to be allowed as business loss.**
	Chapter 8: Income from Other Sources	
35	***CIT v. Sree Rama Multi Tech Ltd. (2018) 403 ITR 426 (SC)***	
	Issue	**Decision**
	Is interest income from share application money deposited in bank eligible for set-off against public issue expenses or should such interest be subject to tax under the head 'Income from Other Sources'?	The assessee-company was statutorily required to keep share application money in a separate account till the allotment of shares was completed. Part of the share application money would normally have to be returned to unsuccessful applicants, and therefore, the entire share application money would not ultimately be appropriated by the company. **The interest earned was inextricably linked with the requirement of raising share capital.** Any surplus money deposited in the bank for the purpose of earning interest is liable to be taxed as "Income from Other Sources". Here, the share application money was deposited with the bank not to make additional income but to comply with the statute. The interest accrued on such deposit is merely incidental. Moreover, the issue of shares relates to capital structure of the company and hence, expenses incurred in connection with the issue of shares are to be capitalised. **Accordingly, the accrued interest is not liable to be taxed as "Income from Other Sources"; the same is eligible to be set-off against public issue expenses.**
36	***Movaliya Bhikhubhai Balabhai v. ITO (TDS) (2016) 388 ITR 343 (Guj)***	
	Issue	**Decision**
	Is interest on enhanced compensation u/s 28 of the Land Acquisition Act, 1894 assessable as capital gains or as income from other sources?	The assessee **has received interest u/s 28 of the Land Acquisition Act, 1894 which represents enhanced value of land and thus, partakes the character of compensation and not interest. Hence, interest u/s 28 is liable to be taxed under the head of 'Capital Gains'** and not under 'Income from Other Sources'. On the other hand, interest u/s 34 of the Land Acquisition Act, 1894 is for the delay in making payment after the compensation amount is determined. Such amount is liable to be taxed under the head 'Income from Other Sources'. ***Note** - The Land Acquisition Act, 1894 has now been repealed and replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Section 72 and section 80 of the new legislation have similar provisions regarding award of interest.*

Sl. No.	Case Law	
37	***CIT v. Parle Plastics Ltd. (2011) 332 ITR 63 (Bom)***	
	Issue	**Decision**
	What are the tests for determining "substantial part of business" of lending company for the purpose of application of exclusion provision u/s 2(22)?	U/s 2(22), "dividend" does not include, *inter alia*, any advance or loan made to a shareholder by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company. **Percentage of turnover in relation to the whole as also the percentage of the profit in relation to the whole and sometimes even percentage of manpower used for a particular part of the business in relation to the total manpower or work force of the company** would be required to be taken into consideration for determining the substantial part of business. **The capital employed for a specific division of a company in comparison to total capital employed** would also be relevant to determine whether the part of the business constitutes a substantial part.
38	***CIT v. Ambassador Travels (P) Ltd. (2009) 318 ITR 376 (Delhi)***	
	Issue	**Decision**
	Would the provisions of deemed dividend u/s 2(22)(e) be attracted in respect of financial transactions entered into in the normal course of business?	U/s 2(22)(e), loans and advances made out of accumulated profits of a company in which public are not substantially interested to a beneficial owner of shares holding not less than 10% of the voting power or to a concern in which such shareholder has substantial interest is deemed as dividend. However, this provision would not apply in the case of advance made in the course of the assessee's business as a trading transaction. **The assessee was involved in booking of resorts for the customers of these companies and entered into normal business transactions as a part of its day-to-day business activities. Such financial transactions cannot under any circumstances be treated as loans or advances received by the assessee from these concerns for the purpose of application of section 2(22)(e).**
39	***CIT v. Manjoo and Co. (2011) 335 ITR 527 (Kerala)***	
	Issue	**Decision**
	Can winnings of prize money on unsold lottery tickets held by the distributor of lottery tickets be assessed as business income and be subject to normal rates of tax instead of the rates prescribed u/s 115BB?	The receipt of the prize money is not in his capacity as a lottery distributor but as a holder of the lottery ticket which won the prize. The Lottery Department also does not treat it as business income received by the distributor but instead treats it as prize money paid on which tax is deducted at source. Further, **winnings from lotteries are assessable under the special provisions of section 115BB, irrespective of the head under which such income falls.**
	Chapter 10: Set-off or Carry Forward and set off of Losses	
40	***Pramod Mittal v. CIT (2013) 356 ITR 456 (Delhi)***	
	Issue	**Decision**
	Can the loss suffered by an erstwhile partnership firm, which was dissolved, be carried forward for set-off by the individual partner who took over the business of the firm as a sole proprietor, considering the succession as a succession by inheritance?	**The partnership firm was dissolved and the takeover of the running business of the firm by the erstwhile partner as a sole proprietor was not a case of succession by inheritance. Hence, the carry forward of losses of the firm by the sole proprietor for set-off against his income is not allowed.** ***Note** - In CIT v. Madhukant M. Mehta (2001) 247 ITR 805 (SC), the sole proprietor had expired and after his death, the heirs succeeded the business as a partnership concern. Therefore, the losses suffered by the deceased proprietor was allowed to be set-off by the partnership firm since the case falls within the exception mentioned u/s 78(2), i.e., a case of succession by inheritance.* *Also, in Saroj Aggarwal v. CIT (1985) 156 ITR 497 (SC), upon death of a partner, his legal heirs were inducted as partners in the partnership firm. The partnership firm was not dissolved on the death of the partner. The partnership firm which suffered the losses continued with induction of the legal heirs of the deceased partner. This, being a case of succession by inheritance, the benefit of carry forward of losses was given to the re-constituted partnership firm.*
	Chapter 11: Deductions from Gross Total Income	
41	***CIT v. Container Corporation of India Limited (2018) 404 ITR 397 (SC)***	
	Issue	**Decision**
	Can Inland Container Depots (ICDs) be treated as infrastructure facility, for profits derived therefrom to be eligible for deduction u/s 80-IA?	Inland Container Depots function for the benefit of exporters and importers located in industrial centres which are situated at distance from sea ports. The purpose of establishing them was to promote the export and import in the country as these depots act as a facilitator and reduce inconvenience to the exporter or importer. Section 80-IA provides for a deduction of profits derived from operation of an infrastructure facility. The definition of "infrastructure facility" in *Explanation* to section 80-IA(4)(i) includes an inland port. **Considering the nature of work such as custom clearance carried out at inland container depots, it can be considered as an inland port within the meaning of section 80-IA(4).**

Sl. No.	Case Law	
42	***CIT v. Meghalaya Steels Ltd (2016) 383 ITR 217 (SC)***	
	Issue	**Decision**
	Can transport subsidy, interest subsidy and power subsidy received from the Government be treated as profits "derived from" business or undertaking to qualify for deduction u/s 80-IB?	There is a direct nexus between profits and gains of the undertaking or business, and reimbursement of such subsidies. Transport subsidy, interest subsidy and power subsidy from Government were revenue receipts which were reimbursed to the assessee for elements of cost relating to manufacture or sale of their products. Thus, the **subsidies were only in order to reimburse, wholly or partially, costs actually incurred by the assessee in the manufacturing and selling of its products. Accordingly, these subsidies qualify for deduction u/s 80-IB.**
43	***CIT v. Orchev Pharma P. Ltd. (2013) 354 ITR 227 (SC) [Liberty India v. CIT (2009) 317 ITR 218 (SC) followed]***	
	Issue	**Decision**
	Can Duty Drawback be treated as profit derived from the business of the industrial undertaking to be eligible for deduction u/s 80-IB?	DEPB / Duty drawback are incentives which flow from the schemes framed by the Central Government or from section 75 of the Customs Act, 1962. Section 80-IB provides for the allowing of deduction in respect of profits and gains derived from eligible business. However, incentive profits are **not** profits derived from eligible business u/s 80-IB. They belong to the category of ancillary profits of such undertaking. Profits derived by way of incentives such as DEPB/Duty drawback cannot be credited against the cost of manufacture of goods debited in the statement of profit and loss and they do not fall within the expression "profits derived from industrial undertaking" u/s 80-IB. **Hence, Duty drawback receipts and DEPB benefits do not form part of the profits derived from the eligible business for the purpose of deduction u/s 80-IB.**
44	***CIT v. Swarnagiri Wire Insulations Pvt. Ltd. (2012) 349 ITR 245 (Karn)***	
	Issue	**Decision**
	Can unabsorbed depreciation of a business of an industrial undertaking eligible for deduction u/s 80-IA be set off against income of another non-eligible business of the assessee?	**The deeming provision contained in section 80-IA(5) cannot override the provisions of section 70(1).** The assessee had incurred loss in eligible business after claiming depreciation. Hence, section 80-IA becomes insignificant, since there is no profit from which this deduction can be claimed. It is thereafter that section 70(1) comes into play, whereby the assessee is entitled to set off the losses from one source against income from another source under the same head of income. Therefore, **the assessee was entitled to the benefit of set off of loss of eligible business against the profits of non-eligible business.** However, once set-off is allowed u/s 70(1) against income from another source under the same head, a deduction to such extent is not possible in any subsequent assessment year i.e., the loss (arising on account of balance depreciation of eligible business) so set-off u/s 70(1) has to be first deducted while computing profits eligible for deduction u/s 80-IA in the subsequent year.
45	***CIT v. Sunil Vishwambharnath Tiwari (2016) 388 ITR 630 (Bom)***	
	Issue	**Decision**
	Is the increase in gross total income consequent to disallowance u/s 40(a)(ia) eligible for profit-linked deduction under Chapter VI-A?	**The assessee is entitled to claim deduction u/s 80-IBA in respect of the enhanced gross total income as a consequence of disallowance of expenditure u/s 40(a)(ia).** ***Note** - The CBDT has, in its Circular No.37/2016 dated 2.11.2016, mentioned that the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Thus, the settled position is that the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B, etc. and other specific disallowances, relating to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced on account of such disallowance.*
46	***CIT v. Nestor Pharmaceuticals Ltd. / Sidwal Refrigerations Ind Ltd. v. DCIT (2010) 322 ITR 631 (Delhi)***	
	Issue	**Decision**
	Does the period of exemption u/s 80-IB commence from the year of trial production or year of commercial production? Would it make a difference if sale was effected from out of the trial production?	The assessee had started trial production in March 1998 whereas commercial production started only in April, 1998. With mere trial production, the manufacture for the purpose of marketing the goods had not started which starts only with commercial production, namely, when the final product to the satisfaction of the manufacturer has been brought into existence and is fit for marketing. However, in this case, since the assessee had effected sale in March 1998, it had crossed the stage of trial production and the final saleable product had been manufactured and sold. The quantum of commercial sale and the purpose of sale (namely, to obtain registration of excise / sales-tax) is not material. **With the sale of those articles, marketable quality was established.** Therefore, the conditions stipulated in section 80-IB were fulfilled with the commercial sale of the two items in that assessment year, and hence the five year period has to be reckoned from A.Y.1998-99.

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<tr><th>Sl. No.</th><th colspan="2">Case Law</th></tr>
<tr><td></td><td colspan="2">Chapter 15: Deduction, Collection and Recovery of Tax</td></tr>
<tr><td>47</td><td colspan="2">ITC Ltd v. CIT (2016) 384 ITR 14 (SC)</td></tr>
<tr><td></td><td>Issue</td><td>Decision</td></tr>
<tr><td></td><td>Whether “tips” received by the hotel-company from its customers (who made payment through credit card) and distributed to the employees would fall within the meaning of “Salaries” to attract tax deduction at source u/s 192?</td><td>Section 15 applies when an employee has a vested right to claim any salary from an employer or former employer. However, in the case on hand, there is no vested right on the part of the employee to claim any amount of tips from the employer, since tips are purely voluntary amounts that may or may not be paid by customers for services rendered.
The amount of tips paid by the employer to the employees had no reference to the contract of employment at all. Tips were received by the employer in a fiduciary capacity as trustee for payments that were received from customers which they disbursed to their employees for service rendered to the customer. There was, therefore, no reference to the contract of employment when these amounts were paid by the employer to the employee.
Therefore, the tips received by the employees could not be regarded as “profits in lieu of salary” in terms of section 17(3). The payment by the employer of tips collected from the customers to the employees would not be a payment made “by or on behalf of” an employer. Such payments would be outside the purview of section 15(b) of the Act.
The person who paid the tip was the customer and not the employer. Even though the amounts were with the employer, he had no title to the money and it was held in a fiduciary capacity as trustee for and on behalf of the employees.
Therefore, in such a case, no liability to deduct tax at source u/s 192 arises, and hence, the assessee company cannot be treated as an assessee in default for non-deduction of tax at source from the amount of tips collected and distributed to its employees.</td></tr>
<tr><td>48</td><td colspan="2">Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372 (SC)</td></tr>
<tr><td></td><td>Issue</td><td>Decision</td></tr>
<tr><td></td><td>Are landing and parking charges paid by an airline company to Airports Authority of India in the nature of rent to attract tax deduction at source u/s 194-I?</td><td>The charges which are fixed by the AAI for landing and take-off services as well as for parking of aircrafts are not for the "use of the land". These charges are for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport. Hence, the charges are not for use of the land per se and, therefore, it cannot be treated as "rent" within the meaning of section 194-I.</td></tr>
<tr><td>49</td><td colspan="2">CIT v. Ahmedabad Stamp Vendors Association (2012) 348 ITR 378 (SC)</td></tr>
<tr><td></td><td>Issue</td><td>Decision</td></tr>
<tr><td></td><td>Can discount given to stamp vendors on purchase of stamp papers be treated as ‘commission or brokerage’ to attract the provisions for tax deduction u/s 194H?</td><td>Although the Government has imposed a number of restrictions on the licensed stamp vendors regarding the manner of carrying on the business, the stamp vendors are required to purchase the stamp papers on payment of price less discount on “principal to principal” basis and there is no “contract of agency” at any point of time. The definition of “commission or brokerage” under clause (i) of the Explanation to section 194H indicates that the payment should be received, directly or indirectly, by a person acting on behalf of another person, inter alia, for services in the course of buying or selling goods. Therefore, the element of agency is required in case of all services and transactions contemplated by the definition of “commission or brokerage” under Explanation (i) to section 194H.
When the licensed stamp vendors take delivery of stamp papers on payment of full price less discount and they sell such stamp papers to the retail customers, neither of the two activities (namely, buying from the Government and selling to the customers) can be termed as service in the course of buying and selling of goods. The discount on purchase of stamp papers, therefore, does not fall within the expression “commission or brokerage” to attract the provisions of tax deduction at source u/s 194H.</td></tr>
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<tr><th>Sl. No.</th><th colspan="2">Case Law</th></tr>
<tr><td>50</td><td colspan="2">CIT v. Kotak Securities Ltd (2016) 383 ITR 1 (SC)</td></tr>
<tr><td></td><td>Issue</td><td>Decision</td></tr>
<tr><td></td><td>Would transaction charges paid by the members of the stock exchange for availing fully automated online trading facility, being a facility provided by the stock exchange to all its members, constitute fees for technical services to attract the provisions of tax deduction at source u/s 194J?</td><td>The assessee company was engaged in the business of share broking, depositories, mobilisation of deposits and marketing public issues. Being a member of the BSE, it made payment to the Stock Exchange by way of transaction charges in respect of fully automated online trading facility and other facilities.
• The services provided by the stock exchange are available to all members in respect of every transaction that is entered into. There is nothing special, exclusive or customized in the service that is rendered by the stock exchange.
• A member who wants to conduct his daily business in the stock exchange has no option but to avail such services. Each and every transaction by a member involves the use of such services provided by the stock exchange for which the member is required to pay transaction charge based on the transaction value besides charges for the membership of the stock exchange.
• Technical services like managerial and consultancy service are in the nature of specialised services made available by the service provider to cater to the special needs of the customer-user as may be felt necessary. It is the above feature that would distinguish or identify a service provider from a facility offered.
The service provided by the BSE for which transaction charges are paid failed to satisfy the test of specialised, exclusive and individual requirement of the user or the consumer who may approach the service provider for such assistance or service.
Therefore, the transaction charges paid to BSE by its members are not for technical services but are in the nature of payments made for facilities provided by the stock exchange. Such payments would, therefore, not attract the provisions of tax deduction at source u/s 194J.</td></tr>
<tr><td>51</td><td colspan="2">UCO Bank v. Dy. CIT (2014) 369 ITR 335 (Delhi)</td></tr>
<tr><td></td><td>Issue</td><td>Decision</td></tr>
<tr><td></td><td>Is section 194A applicable in respect of interest on fixed deposits in the name of Registrar General of High Court?</td><td>The expression “payee” u/s 194A would mean the recipient of income whose account is maintained by the person paying interest. The Registrar General is neither recipient of the amount credited to his account nor to interest accruing thereon. Therefore, he cannot be considered as a ‘payee’ for the purposes of section 194A. In the absence of a payee, the machinery provisions for deduction of tax to his credit are ineffective. The credit by the bank in the name of the Registrar General would, thus, not attract the provisions of section 194A.
Note - The CBDT has accepted the aforesaid judgment and accordingly, vide Circular No.23/2015 dated 28.12.2015, clarified that interest on FDRs made in the name of Registrar General of the Court or the depositor of the fund on the directions of the Court, will not be subject to TDS till the matter is decided by the Court. However, once the Court decides the ownership of the money lying in the fixed deposit, the provisions of section 194A will apply to the recipient of the income.</td></tr>
<tr><td>52</td><td colspan="2">Vodafone Essar Cellular Ltd. v. ACIT (TDS) (2011) 332 ITR 255 (Kerala)</td></tr>
<tr><td></td><td>Issue</td><td>Decision</td></tr>
<tr><td></td><td>Can discount given on supply of SIM cards by a telecom company to its distributors be treated as commission to attract the TDS provisions u/s 194H?</td><td>There is no sale of goods involved and the entire charges collected by the assessee-telecom company from the distributors at the time of delivery of SIM cards or recharge coupons were only for rendering services to ultimate subscribers. The assessee was accountable to the subscribers for failure to render prompt services pursuant to connections given by the distributor. Therefore, the distributor only acted as a middleman on behalf of the assessee for procuring and retaining customers and consequently, the discount given to him was within the meaning of commission on which tax was deductible u/s 194H.</td></tr>
<tr><td>53</td><td colspan="2">Indus Towers Ltd v. CIT (2014) 364 ITR 114 (Delhi)</td></tr>
<tr><td></td><td>Issue</td><td>Decision</td></tr>
<tr><td></td><td>Is payment made for use of passive infrastructure facility such as mobile towers subject to tax deduction u/s 194C or 194-I?</td><td>The assessee owned a network of telecom towers and infrastructure services which were let out to major telecom operators in the country. The infrastructure was given for the use of mobile operators. The towers were the neutral platform without which the mobile operators could not operate. Each mobile operator has to carry out this activity, by necessarily renting premises and installing the same equipment. The dominant intention was the use of equipment or plant or machinery i.e., the passive infrastructure, and the use of premises was only incidental. Hence, tax has to be deducted@2% as per section 194-I(a), the rate applicable for payment made for use of plant and machinery.</td></tr>
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Sl. No.	Case Law	
54	***CIT v. Senior Manager, SBI (2012) 206 Taxman 607 (All)***	
	Issue	**Decision**
	In respect of a co-owned property, would the threshold limit mentioned in section 194-I for non-deduction of tax at source apply for each co-owner separately or is it to be considered for the complete amount of rent paid to attract liability to deduct tax at source?	Since the share of each co-owner is definite and ascertainable, they cannot be assessed as an association of persons as per section 26. The income from such property is to be assessed in the individual hands of the co-owners. Therefore, it is not necessary that there should be a physical division of the property by metes and bounds to attract the provisions of section 26. In this case, since the payment of rent is made to each co-owner by way of separate cheque and their share is definite, the threshold limit mentioned in section 194-I has to be seen separately for each co-owner.
55	***CIT (TDS) v. Shree Mahalaxmi Transport Co. (2011) 339 ITR 484 (Guj)***	
	Issue	**Decision**
	Can the payment made by an assessee engaged in transportation of building material and transportation of goods to contractors for hiring dumpers, be treated as rent for machinery or equipment to attract provisions of tax deduction at source u/s 194-I?	Since the assessee had given contracts to the parties for the transportation of goods and not for renting out machinery and equipment, such payments could not be termed as rent paid for the use of machinery. The provisions of section 194-I would, therefore, not be applicable. **The transactions being in the nature of contracts for shifting of goods from one place to another would be covered under works contracts, thereby attracting the provisions of section 194C.**
56	***CIT v. V.S. Dempo & Co P Ltd (2016) 381 ITR 303 (Bom) (Full Bench)***	
	Issue	**Decision**
	Is tax is required to be deducted u/s 195 on the demurrage charges paid to a foreign shipping company which is governed by section 172 for the purpose of levy and recovery of tax?	Since section 172 dealing with shipping business of non-residents contains a *non-obstante* clause and applies both for the purpose of the levy and recovery of tax in the case of any ship carrying passengers etc., belonging to or chartered by a non-resident and shipping at a port in India, **there would be no obligation on the payer-assessee to deduct the tax at source u/s 195 on payment of demurrage charges to the non-resident shipping company.**
57	***Sun Outsourcing Solutions Private Limited v. CIT (Appeals) (2018) 407 ITR 480 (T&AP)***	
	Issue	**Decision**
	Is interest u/s 201(1A) attracted even in a case where non-deduction of tax at source was under a *bona fide* belief that tax was not deductible and the default was not wilful?	The assessee is a private limited company engaged in the business of software development with its office in Hyderabad and branch office in London. In the course of executing software projects in the U.K., the assessee had deputed some employees from Hyderabad to London. The assessee did not deduct tax at source on the allowances paid to the staff deputed to the U. K. **Since the company had failed to deduct tax on the payments made to its employees, being Indian residents deputed to work in the U.K., section 201(1A) is automatically attracted; even if such non-deduction was due to the *bona fide* belief that tax is not deductible in such case, the company is, nevertheless, liable to pay interest u/s 201(1A).**
	Chapter 18: Appeals and Revision	
58	***Genpact India Pvt. Ltd. v. DCIT & Ors (2019) 419 ITR 440 (SC)***	
	Issue	**Decision**
	Is appellate remedy by way of appeal before Commissioner (Appeals) u/s 246A available to a company denying its liability to pay additional income-tax @ 20% on the distributed income u/s 115QA?	The situations referred to in section 246A(1)(a) of the Income-tax Act, 1961 are: (i) An order against the assessee, where the assessee denies his liability to be assessed under the Act, or (ii) An intimation u/s 143(1)/(1B), where the assessee objects to the making of adjustments, or (iii) Any order of assessment u/s 143(3)/144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed. The contingencies detailed in (ii) and (iii) hereinabove arise out of assessment proceedings but the first contingency is a standalone postulate and is not dependent purely on the assessment proceedings either u/s 143 or section 144. The expression "denies his liability to be assessed" is quite comprehensive to take within its fold every case where the assessee denies his liability to be assessed under the Act. **Any determination u/s 115QA, be it regarding quantification of the liability or the question whether such company is liable or not, would fall within the ambit of the first postulate referred to hereinabove i.e., "an order against the assessee, where the assessee denies his liability to be assessed under this Act". Accordingly, an appeal u/s 246A to Commissioner (Appeals) would be maintainable against the determination of liability u/s 115QA.**

Sl. No.	Case Law	
59	***CIT v. Pruthvi Brokers & Shareholders (2012) 349 ITR 336 (Bom)***	
	Issue	**Decision**
	Can an assessee make an additional/ new claim before an appellate authority, which was not claimed by the assessee in the return of income (though he was legally entitled to), otherwise than by way of filing a revised return of income?	The appellate authorities have jurisdiction to permit additional claims before them, however, the exercise of such jurisdiction is entirely the authorities' discretion. In case an additional ground was raised before the appellate authority which could not have been raised at the stage when the return was filed or when the assessment order was made, or the ground became available on account of change of circumstances or law, the appellate authority can allow the same. **Additional grounds can be raised before the Appellate Authority even otherwise than by way of filing return of income. However, in case the claim has to be made before the Assessing Officer, the same can only be made by way of filing a revised return of income.**
60	***CIT v. Earnest Exports Ltd. (2010) 323 ITR 577 (Bom)***	
	Issue	**Decision**
	Does the Appellate Tribunal have the power to review or re-appreciate the correctness of its earlier decision u/s 254(2)?	The power u/s 254(2) is limited to rectification of a mistake apparent on record and therefore, the Tribunal must restrict itself within those parameters. **Section 254(2) is not a carte blanche for the Tribunal to change its own view by substituting a view which it believes should have been taken in the first instance.** Section 254(2) is not a mandate to unsettle decisions taken after due reflection. **In this case, the Tribunal, while dealing with the application u/s 254(2), virtually reconsidered the entire matter and came to a different conclusion. This amounted to a reappreciation of the correctness of the earlier decision on merits, which is beyond the scope of the power conferred u/s 254(2).**
61	***Lachman Dass Bhatia Hingwala (P) Ltd. v. ACIT (2011) 330 ITR 243 (Delhi)(Full Bench)***	
	Issue	**Decision**
	Can the Tribunal exercise its power of rectification u/s 254(2) to recall its order in entirety, where there is a mistake apparent from record?	One of the important reasons for giving the power of rectification to the Tribunal is to see that no prejudice is caused to either of the parties appearing before it by its decision based on a mistake apparent from the record. When prejudice results from an order attributable to the Tribunal's mistake, error or omission, then, it is the duty of the Tribunal to set it right. In that case, the Tribunal had not considered the material which was already on record while passing the judgment. The Apex Court in another case law, took note of the fact that the Tribunal committed a mistake in not considering material which was already on record and the Tribunal acknowledged its mistake and accordingly, rectified its order. **Accordingly the High Court that the Tribunal, while exercising the power of rectification u/s 254(2), can recall its order in entirety if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake, error or omission and the error committed is apparent.**
62	***CIT v. Fortaleza Developers (2015) 374 ITR 510 (Bom)***	
	Issue	**Decision**
	Can the Commissioner invoke revisionary jurisdiction u/s 263, when the subject matter of revision (i.e., whether the manner of allocation of revenue amongst the members of AOP would affect the allowability and/or quantum of deduction u/s 80-IB) has been decided by the Commissioner (Appeals) and the same is pending before the Tribunal?	**When the order of the first appellate authority is complete and the appeal is pending before the Tribunal, the Commissioner is precluded from invoking section 263 for revision of the very same matter decided by the first appellate authority since clause (c) of the *Explanation* 1 to section 263 debars the same.** Accordingly, the High Court held that the order passed by the Assessing Officer got merged with the order of the first appellate authority. The very same issue cannot be revised by invoking revisionary jurisdiction u/s 263.
63	***Sunil Vasudeva & Others v. Sundar Gupta & Others (2019) 415 ITR 281 (SC)***	
	Issue	**Decision**
	Does the High Court have the inherent power to review its own order to correct a mistake apparent from the record?	The High Court can review its own order, where the grounds for review were: (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him; (ii) mistake or error apparent on the face of the record; (iii) any other sufficient reason. A review will, however, not be maintainable in the following cases: (i) repetition of old and overruled argument; (ii) minor mistakes of inconsequential import.

Sl. No.	Case Law	
		The following observations were also made by the Supreme Court in relation to entertaining a review application: (i) review proceedings cannot be equated with the original hearing of the case. (ii) a review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. (iii) a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error. (iv) The mere possibility of two views on the subject cannot be a ground for review. (v) The error apparent on the face of the record should not be an error which has to be fished out and searched. (vi) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition. (vii) A review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.
64	***CIT v. Meghalaya Steels Ltd. (2015) 377 ITR 112 (SC)***	
	Issue	**Decision**
	Does the High Court have an inherent power under the Income-tax Act, 1961 to review an earlier order passed on merits?	High Courts being courts of record under article 215 of the Constitution of India, the power of review would inhere in them. **There is nothing in article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it.** Section 260A(7) does not purport in any manner to curtail or restrict the application of the provisions of the Code of Civil Procedure. Section 260A(7) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals u/s 260A. That does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the High Court's inherent jurisdiction is in any manner affected.
65	***CIT v. A.A. Estate Pvt. Ltd. (2019) 413 ITR 438 (SC)***	
	Issue	**Decision**
	Considering the procedure as prescribed u/s 260A, is the High Court justified in not framing any substantial question of law itself and adjudicating merely on the questions put forth by the appellant?	There lies a distinction between the questions proposed by the appellant for admission of the appeal to the High Court and the questions framed by the High Court. The substantial questions of law, which are proposed by the appellant fall u/s 260A(2)(c) whereas the substantial question of law is required to be framed by the High Court fall u/s 260A(3). **U/s 260A(4), the appeal is heard on merits only on the substantial question of law framed by the High Court u/s 260A(3).** If the High Court is of the view that the appeal did not involve any substantial question of law, it should have recorded a categorical finding to that effect saying that the questions proposed by the appellant either do not arise in the case or/and are not substantial questions of law so as to attract the rigour of section 260A for its admission and accordingly should have dismissed the appeal *in limine*. However, this was not done. Instead, **the appeal was heard only on the questions urged by the appellant u/s 260A(2)(c), which is not in line with the requirement contained in section 260A(4). The High Court, therefore, did not decide the appeal in conformity with the mandatory procedure prescribed in section 260A.**
66	***Spinacom India (P.) Ltd. v. CIT (2018) 258 Taxman 128 (SC)***	
	Issue	**Decision**
	Can the delay in filing appeal u/s 260A be condoned where the stated reason for delay is the pursuance of an alternate remedy by way of filing an application before the ITAT u/s 254(2) for rectification of mistake apparent on record?	The Supreme Court rejected the question of invoking section 14 of the Limitation Act, 1963 which allows condonation of delay on demonstration of sufficient cause. The Supreme Court refused to accept the submission that the application before the ITAT u/s 254(2) was an alternate remedy to filing of the application u/s 260A. The former is an application for rectifying a 'mistake apparent from the record' which is much narrower in scope than the latter. U/s 260A, an order of the ITAT can be challenged on substantial questions of law. The Supreme Court stated that the appellant had the option of filing an appeal u/s 260A while also mentioning in the Memorandum of Appeal that its application u/s 254(2) was pending before the ITAT. **The time period for filing an appeal u/s 260A does not get suspended on account of the pendency of an application before the ITAT u/s 254(2).**