

ITRV DIRECT TAX CASE LAW DIGEST FOR YEAR 2015

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ASSESSMENT / RECTIFICATION / REVISION / APPEALS / DEMAND / REFUND / STAY

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-ITAT-KOL-004	Dr. Murari Mohan Kokey vs. ITO	Kolkata ITAT	CIT(A) cannot decline to condone delay in filing appeal and still decide it on merits
2015-ITRV-HC-AP-013	CIT vs. Shri Girija Smelters (P) Ltd	Andhra Pradesh High Court	An ITO cannot carry out the functions of an authority under the Central Excise Act and arrogate to himself the power to determine the quantity of production, or the intricacies of the manufacturing process. He must seek assistance of the concerned authority
2015-ITRV-HC-MUM-028	The Stock Holding Corporation of India vs. CIT	Bombay High Court	Refund of self-assessment tax is entitled to interest u/s 244A
2015-ITRV-HC-MUM-029	Jagati Publications Ltd vs. ITAT	Bombay High Court	Action of ITAT President in forming Special Bench u/s 255(3) was lacking in propriety
2015-ITRV-HC-GUJ-038	Bilag Industries Pvt. Ltd vs. CIT	Gujarat High Court	Failure to conduct inquiry & hear assessee before issue of notice renders proceedings invalid. Order of CIT(A) results in merger of AO's order and bars s. 263 revision
2015-ITRV-HC-MUM-048	Jehangir H C Jehangir vs. ITO	Bombay High Court	ITAT cannot decline to admit additional ground of appeal u/s 254 on the ground that it would in any case be answered against the appellant on merits
2015-ITRV-HC-MUM-056	Slum Rehabilitation Authority vs. DDIT	Bombay High Court	Laid down on the guidelines that have to be followed while considering a stay application u/s 220(6)
2015-ITRV-HC-MUM-057	Mumbai Metropolitan Region Development Authority vs. DDIT	Bombay High Court	Laid down the parameters to be considered in deciding a stay application u/s 220(6)
2015-ITRV-HC-MUM-058	Artist Tree Pvt. Ltd vs. CBDT	Bombay High Court	The expression 'genuine hardship' should be construed liberally, particularly in matters of entertaining of applications seeking condonation of delay u/s 119(2)(b).
2015-ITRV-	Supreme	Bombay High	ITAT must adopt a justice oriented

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HC-MUM-062	Industries Ltd vs. ACIT	Court	approach and not defeat the legitimate rights on the altar of procedures and technicalities. Even a mistake by the assessee can be rectified u/s 254(2)
2015-ITRV-HC-AP-065	CIT vs. Godavari Electrical Conductors	Andhra Pradesh High Court	Issue of notice straightaway through affixture is not proper & renders proceedings void. On the expiry of the limitation period valuable rights accrue to the assessee
2015-ITRV-HC-MUM-072	State Bank of India vs. DCIT	Bombay High Court	If the Tribunal accepts that a mistake has crept in the order, interests of justice is served if the entire order is recalled (suo moto by the ITAT) & appeal re-heard u/s 254(2). Appeals should not be disposed off in "light hearted" and "casual manner"
2015-ITRV-ITAT-MUM-082	M/s. ANS Law Associates vs. ACIT	Mumbai ITAT	Additions made solely on the basis of AIR information are not sustainable in law. The AO has to prove that assessee has received income from a particular source. The assessee cannot be expected to prove the negative
2015-ITRV-ITAT-DEL-090	Minda Sai Limited vs. ITO	Delhi ITAT	Judgement of a non-jurisdictional High Court has to be preferred over the judgement of a Special Bench of the ITAT
2015-ITRV-ITAT-MUM-092	Gausia Cold Storage Pvt. Ltd vs. ACIT	Mumbai ITAT	Entertained appeal against order passed by CIT u/s 264
2015-ITRV-ITAT-LUK-097	Raibareilly District Co-operative Bank Ltd vs. DIT	Lucknow ITAT	As DIT is of the same rank as the CIT(A), an appeal against the DIT's order can only be filed before the ITAT even though s. 253(1) does not refer to s. 271FA
2015-ITRV-HC-MUM-116	CIT vs. Fine Jewellery (India) Ltd	Bombay High Court	Fact that assessment order is silent on a point does not mean that there is no application of mind by AO u/s 263 if he has raised a query during the assessment proceedings and assessee has replied
2015-ITRV-HC-MUM-117	CIT vs. State Bank Of India	Bombay High Court	Uniformity in treatment is the basic premise of rule of law. The Dept cannot arbitrarily pick and choose which orders of the ITAT should be challenged in the High Court. If ITAT has followed an order which is not challenged by the Dept then an affidavit must be filed explaining the distinguishing features which warrants the

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			different view
2015-ITRV- HC-BOM-130	Somerset Place Co-operative Housing Society Ltd vs. ITO	Bombay High Court	Explained the entire law on condonation of delay u/s 260A
2015-ITRV- SC-163	ACIT (Agr. IT) vs. Netley 'B'	Supreme Court	While an amendment to overrule a judgement is not valid, it is permissible to retrospectively alter the character of the levy so as to save it from illegality
2015-ITRV- ITAT-DEL- 187	Employees' Provident Fund Organization vs. ACIT	Delhi ITAT	An appeal can be filed before the Tribunal u/s 253(1)(a) against an order of the CIT(A) rejecting the stay application
2015-ITRV- ITAT-MUM- 188	ITO vs. M/s. Paras Builders	Mumbai ITAT	There is no judicial impropriety in the CIT filing an appeal before the Tribunal u/s 253(2) against his own order as CIT(A) deciding the appeal in favour of the assessee
2015-ITRV- ITAT-DEL- 190	ITO vs. Jasjit Singh	Delhi ITAT	In a cross-objection u/s 253, a new legal issue can be raised for the first time before the ITAT
2015-ITRV- ITAT-MUM- 192	Rita Stephen Pinto vs. ITO	Mumbai ITAT	Only credits received during the year can be assessed as unexplained cash credits u/s 68. Credits of earlier years, even if unexplained, cannot be assessed and such mistake can be rectified u/s 154
2015-ITRV- HC-BOM-194	R. W. Promotions P. Ltd vs. ITAT	Mumbai High Court	Pendency of an appeal filed in the High Court u/s 260A is no bar to the maintainability of a Miscellaneous Application filed u/s 254(2)
2015-ITRV- ITAT-MUM- 197	Kroner Investments Limited vs. DCIT	Mumbai ITAT	Additions made solely on the basis of AIR information are not sustainable in the eyes of law if the Revenue has not made any enquires to find out whether the AIR information was correct or not
2015-ITRV- HC-AHD-200	Jupiter Corporation Services Limited vs. DCIT	Ahmedabad ITAT	Even if Third Member's verdict is shown to be "unsustainable in law and in complete disregard to binding judicial precedents", Division Bench has no choice but to give effect to it u/s 255(4)
2015-ITRV- HC-DEL-216	Pepsi Foods Pvt. Ltd vs. ACIT	Delhi High Court	The Third Proviso of s. 254(2A) which restricts the power of the ITAT to grant stay beyond 365 days "even if the delay in disposing of the appeal is not attributable

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			to the assessee” is arbitrary, unreasonable and discriminatory. It is struck down as violative of Article 14. The ITAT has the power to extend stay even beyond 365 days
2015-ITRV-ITAT-DEL-220	Computer Engineering Services India (P) Ltd vs. ACIT	Delhi ITAT	S. 143(2) and 153C notices issued in the name of the non-existent amalgamated company are void and render the assessment order null and void
2015-ITRV-ITAT-CHD-242	DCIT vs. Sham Sunder Sharma	Chandigarh ITAT	Orders of the ITAT u/s 250 are binding on the lower authorities and should be followed unreservedly. Blatant failure to do so could attract contempt of court proceedings
2015-ITRV-ITAT-DEL-243	Bharat Heavy Electrical Ltd vs. ITO (TDS)	Delhi ITAT	Appeal in the ITAT can be filed against order of the CIT(A) on a stay application u/s 253. Stay should be granted if relevant criteria of existence of prima facie arguable case, irreparable loss and financial position are not considered by the CIT(A)
2015-ITRV-ITAT-DEL-253	Maya Gupta vs. CIT	Delhi ITAT	In a case where there is inadequate inquiry but not lack of inquiry, the CIT must conduct inquiry and verification and record the finding how the assessment order is erroneous u/s 263. He cannot simply remand the matter to the AO for verification
2015-ITRV-HC-BOM-277	Hinduja Global Solutions Ltd vs. UOI	Bombay High Court	Action of the ITAT in disregarding its own order without reason and remanding matter to AO for fresh consideration is "arbitrary" and "failure to perform basic judicial function" and a "lapse" which should not occur again
2015-ITRV-ITAT-CHD-285	CIT vs. Hind Agro Industries	Chandigarh ITAT	If books are rejected and Gross Profit rate is estimated in assessment made u/s 144, separate disallowance of expenses cannot be made

BOGUS / UNACCOUNTED PURCHASES / SALES

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-	ACIT vs. M/s G	Mumbai	Merely because a party has admitted to

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ITAT-MUM-081	V Sons	ITAT	indulging in sham/ accommodation transactions does not mean that all his transactions with the assessee should be treated as sham (Bogus Purchases).
2015-ITRV-HC-MUM-115	CIT vs. Hariram Bhambhani	Bombay High Court	The entire unaccounted sales cannot be assessed as undisclosed income particularly if the purchases have been accounted for. Only the net profit on such unaccounted sales can be taken as income
2015-ITRV-ITAT-MUM-169	ITO vs. Deepak Popatlal Gala	Mumbai ITAT	Addition towards bogus purchases cannot be made solely on the basis of statements of seller before sales-tax authorities. The AO has to conduct own enquiries and give assessee opportunity to cross-examine the seller
2015-ITRV-ITAT-MUM-170	Ramesh Kumar & Co vs. ACIT	Mumbai ITAT	AO is not entitled to treat all purchases as bogus merely because sales-tax department has called the seller a "Hawala dealer". The AO ought to have verified the bank details of the assessee and the seller and other evidence before treating the purchases as bogus
2015-ITRV-ITAT-MUM-196	ACIT vs. Ramila Pravin Shah	Mumbai ITAT	Fact that suppliers names appear in the list of hawala dealers of the sales-tax dept and that assessee is unable to produce them does not mean that the purchases are bogus if the payment is through banking channels & GP ratio becomes abnormally high
2015-ITRV-ITAT-MUM-266	Shoreline Hotel Pvt. Ltd vs. CIT	Mumbai ITAT	Explained the manner of computing profits in the case of bogus purchases by an assessee who is not a dealer in the goods but has consumed the goods in his business
2015-ITRV-ITAT-MUM-280	ACIT vs. Tristar Jewellery Exports Pvt. Ltd	Mumbai ITAT	Reliance on statement of supplier who confesses to providing accommodation entries (bogus purchase / sales) without giving assessee right of cross-examination violates principles of natural justice and the addition has to be deleted in toto

BUILDER / DEVELOPERS AGREEMENT

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-	CIT vs. C.	Madras High	A Power of Attorney which does not enable

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HC-MAD-008	Sugumaran	Court	enjoyment of property does not result in a "transfer". CBDT Circular No.495 dated 22.9.1987 reads more into s. 2(47)(vi) than warranted
2015-ITRV- HC-KER-009	Cochin Stock Exchanges Limited vs. CIT	Kerala High Court	Execution of a Power of Attorney in favour of the builder constitutes part performance u/s 53A of TOP Act and a "transfer" u/s 2(47)(v) for capital gains.
2015-ITRV- ITAT-MUM-017	Dilip Anand Vazirani vs. ITO	Mumbai ITAT	Mere execution of a development agreement does not result in a "transfer" u/s 2(47) (v) / (vi) if the approval of the municipality is delayed and the developer has not started work
2015-ITRV- ITAT-HYD-040	ACIT vs. B. Rajamallu	Hyderabad ITAT	Mere handing over possession pursuant to development agreement does not result in transfer u/s. 2(47) read with s. 53A of Transfer of Property act if developer has not taken steps for development of property
2015-ITRV- ITAT-MUM-121	Fardeen Khan vs. ACIT	Mumbai ITAT	Land ceases to be a capital asset on date of application for conversion into N. A. land. Pursuant to amendment to s. 53A of TOP Act, non-registered development agreement does not result in transfer u/s 2(47)(v). Law in Chaturbhuj Dwarkadas Kapadia 260 ITR 461 (Bom) does not apply after amendment to s. 53A
2015-ITRV- HC-BOM-139	CIT vs. Chemosyn Ltd	Bombay High Court	Even if gains have accrued on execution of the development agreement as per Chaturbhuj Dwarkadas, the subsequent modification/ supersession of the agreement means that gains are not taxable as per real income theory.
2015-ITRV- ITAT-LKN-248	ACIT vs. Upper India Paper Mills Co Pvt. Ltd.	Lucknow ITAT	Even if possession is handed over to the developer, there is no "transfer" u/s 2(47)(v) if the developer has only paid an interest-free advance to the assessee to meet expenses
2015-ITRV- HC-P&H-271	C. S. Atwal vs. CIT	Punjab & Haryana High Court	Explained entire law on whether the entering into a joint development agreement with an irrevocable power of attorney in favour of the developer results in a "transfer" u/s 2(47)(v) / (vi) for purposes of capital gains

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CAPITAL GAIN

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-ITAT-MUM-014	ITO vs. Narinder Kaur Bhatia	Mumbai ITAT	Purchasing the undivided share of a co-owner in a new flat constitutes a "purchase" & is eligible for exemption u/s 54
2015-ITRV-ITAT-HYD-041	Andhra Networks Limited vs. DCIT	Hyderabad ITAT	For constituting a long-term capital asset, date of allotment of property and not date of registration to be considered. Benevolent approach should be adopted and not a hyper-technical or legalistic one
2015-ITRV-ITAT-AMR-069	Nitco Logistics Pvt. Ltd vs. JCIT	Amritsar ITAT	S. 50C does not apply to the purchaser of property
2015-ITRV-HC-MUM-070	CIT vs. Sambhaji Nagar Coop. Hsg. Society Ltd	Mumbai High Court	Gains on sale of TDR received as additional FSI as per the D. C. Regulations has no cost of acquisition and is not chargeable to capital gains u/s 45 r.w.s. 48
2015-ITRV-ITAT-DEL-087	ITO vs. Modipon Ltd	Delhi ITAT	The consideration u/s 50C has to be determined on the basis of the circle-rate prevailing on the date of execution of sale deed and not on the basis of the circle-rate prevailing on the date of registration of the sale deed
2015-ITRV-ITAT-HYD-100	Mylan Laboratories Ltd vs. ACIT	Hyderabad ITAT	If technical know-how is transferred by reserving certain rights, there is no "transfer" for s. 2(47) capital gains
2015-ITRV-ITAT-PUNE-110	M/s. Chakrabarty Medical Centre vs. TRO	Pune ITAT	Property introduced by a partner into firm becomes the asset of the firm even if there is no registered deed. Though the asset is held by the firm as a depreciable asset and though the investment in s. 54EC bonds is made in the names of the partners, the firm is eligible for s. 54EC exemption
2015-ITRV-ITAT-HYD-125	S. Uma Devi vs. CIT	Hyderabad ITAT	S. 54F is a beneficial provision which has to be construed liberally. Even if construction/purchase of new house is not completed within stipulated period, deduction is admissible if investment is made
2015-ITRV-HC-P&H-214	CIT vs. Usha Saboo	Punjab & Haryana High Court	Distinguishing Vodafone has held that where the agreement between the parties (for sale of shares) indicates that the lump-sum consideration was in respect of two or more

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			promises (i.e. sale of shares & non-compete covenant), it is liable to be bifurcated and apportioned between each of the assets
2015-ITRV-ITAT-MUM-226	Natural Gas Company Pvt. Ltd vs. DCIT	Mumbai ITAT	Interest paid on moneys borrowed to acquire assets cannot be treated as the 'cost of acquisition' of the asset u/s 48.
2015-ITRV-ITAT-MUM-255	ACIT vs. Sagar Nitin Parikh	Mumbai ITAT	Booking a flat which is going to be constructed by the builder is a case of "construction" of the flat. If the flat is booked and constructed prior to the date of transfer of the old flat, deduction u/s 54 is not available. The date of receiving possession of the new flat cannot be regarded as the date of "purchase" of the new flat
2015-ITRV-ITAT-CHD-265	Barjinder Singh Bhatti vs. ITO	Chandigarh ITAT	If the AO is not satisfied with the valuation made by the assessee's valuer, he must refer the issue to the DVO u/s 55A. He cannot reject the assessee's valuation without any basis
2015-ITRV-SC-281	Fibre Boards (P) Ltd vs. CIT	Supreme Court	S. 54G does not require that the machinery etc has to be acquired in the same AY in which the transfer takes place. It is sufficient if the capital gain is "utilized" towards purchase of P&M by giving advances to suppliers. Section 24 of the General Clauses Act applies also to 'omissions' along with 'repeals' and saves rights given by subordinate legislation

CAPITAL V/S REVENUE / CHARGE TO TAX

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-ITAT-BANG-033	Subhash Kabini Power Corporation Ltd vs. CIT	Bangalore ITAT	Profits on sale of carbon credits is not a taxable revenue receipt
2015-ITRV-ITAT-MUM-054	ACIT vs. Clariant Chemicals (I) Ltd	Mumbai ITAT	Non-compete fee to ex-MD is revenue expenditure u/s 37(1)

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2015-ITRV-ITAT-PUNE-063	DCIT vs. Bramha Corp. Hotels & Resorts Ltd	Pune ITAT	Premium paid to buyback shares of recalcitrant shareholders is to facilitate smooth running of business and is allowable as revenue business expenditure
2015-ITRV-ITAT-AMR-069	Nitco Logistics Pvt. Ltd vs. JCIT	Amritsar ITAT	Dharmada collections are not taxable as income.
2015-ITRV-HC-MUM-071	CIT vs. Darbhanga Mansion CHS Ltd	Bombay High Court	Transfer Fees received by Co-op Hsg Society from incoming & outgoing members (even in excess of limits) is exempt on the ground of mutuality
2015-ITRV-ITAT-MUM-111	Vardhman Developers Ltd vs. ITO	Mumbai ITAT	Expenditure towards repair and renovation of leased premises is capital in nature. It has also explained the method for allocation of common expenses to different WIP projects of a builder
2015-ITRV-HC-MUM-120	CIT vs. M/s SMSL-UANRCL (JV)	Bombay High Court	Even if contract is awarded to the Joint Venture, the income is assessable only in the hands of the person who has executed the work
2015-ITRV-HC-DEL-124	CIT vs. Bougainvillea Multiplex Entertainment	Delhi High Court	Entertainment tax subsidy is a capital receipt even though the source is the public who visit the cinema hall after it becomes operational
2015-ITRV-ITAT-MUM-161	DCIT vs. KDA Enterprises Pvt. Ltd	Mumbai ITAT	Companies, if authorized by the MoA & AoA, are competent to make and receive gifts. Natural love and affection is a not necessary requirement for a gift. The gift is neither taxable as income u/s. 56 (pre-amendment) nor as capital gain nor as income u/s.2(22)(e) nor u/s.115JB
2015-ITRV-ITAT-AHD-218	DCIT vs. Ohm Developers	Ahmedabad ITAT	'On-Money' received by a builder on sale of flats held as stock-in-trade is taxable only in the year of sale of the flats and not in the year of offer/ disclosure
2015-ITRV-ITAT-BLR-250	Dheeraj Amin vs. ACIT	Bangalore ITAT	Explained the tax implications of entering into a development agreement in respect of land held as stock-in-trade
2015-ITRV-HC-BOM-276	CIT vs. Bisleri Sales Ltd	Bombay High Court	Non-compete consideration received prior to insertion of s. 28(va) is not taxable.

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CHARITY / EXEMPT INCOMES

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-ITAT-LKN-002	ACIT vs. The Upper India Chamber of Commerce	Lucknow ITAT	If a charitable institution invests the entire sale consideration in other capital asset, s. 50C should not be invoked and s. 11(1A) would prevail over it
2015-ITRV-ITAT-CHD-030	ACIT vs. The Tribune Trust	Chandigarh ITAT	Explained in detail the meaning of expression "not involving the carrying of any activity of profit" under S. 2(15) Proviso/ 10(23C) (iv).
2015-ITRV-ITAT-KOL-055	Indian Chamber of Commerce vs. ITO	Kolkata ITAT	Explained entire law on what is "charitable purpose" u/s 2(15) read with s. 11 and scope of Proviso inserted by Finance (No.2) Act 2009 w.r.e.f. 01.04.2009 explained
2015-ITRV-ITAT-PUNE-079	Ashoka Education Foundation vs. CIT	Pune ITAT	CIT, while granting registration or renewal u/s 12AA / 80G(5), can only look at the nature of activities and is not concerned with violation of s. 11(5) or s. 13
2015-ITRV-ITAT-DEL-093	National Horticulture Board vs. ACIT	Delhi ITAT	Fees or consideration received for rendition of a service to business, trade or commerce will not attract the disability under first proviso to s. 2(15) if such service is subservient to the charitable cause and is not in the nature of business itself. Reference made to various cases including ICAI
2015-ITRV-ITAT-DEL-099	Delhi & District Cricket Association vs. DIT(E)	Delhi ITAT	Laid down important propositions of S. 11 (charity) and 12AA (cancellation of registration).
2015-ITRV-HC-DEL-107	India Trade Promotion Organization vs. DGIT (E)	Delhi High Court	If the definition of "charitable purpose" u/s 2(15) is construed literally, it is violative of the principles of equality & unconstitutional. If the dominant object is not to carry on business or trade or commerce, then an incidental or ancillary activity for which a fee is charged does not destroy the character of a charitable institution u/s 10(23C)(iv)
2015-ITRV-ITAT-PUNE-112	Kul Foundation vs. CIT	Pune ITAT	CIT, while granting registration or renewal u/s 12AA / 80G(5), can only look at the nature of activities and is not concerned with potential violation of s. 11(5) or s. 13. Registration cannot be denied on ground that activities have not commenced

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2015-ITRV-ITAT-DEL-126	Army Welfare Placement Organization vs. DIT (E)	Delhi ITAT	Receiving fees simplicitor is not reason enough to hold that the activity is not a charitable activity u/s 2(15). The fundamental essence of the activity has to be seen
2015-ITRV-HC-ALL-144	CIT vs. Muzafar Nagar Development Authority	Allahabad High Court (Full Bench)	Non disposal of an application for registration before the expiry of six months as provided u/s 12AA (2) would not result in deemed grant of registration. Assessee will have to file a Writ to compel CIT to consider application
2015-ITRV-HC-BOM-145	M/s Yash Society vs. CCIT	Bombay High Court	Institution consistently generating surplus, utilizing the surplus to buy assets, spending meager amount on treatment of poor patients is not existing “solely for philanthropic purpose” and “not for the purpose of profits”. Fact that exemption u/s 10(23C)(via) has been allowed in the past does not mean exemption has to be continued
2015-ITRV-SC-154	Queens Educational Society vs. CIT	Supreme Court	Mere surplus does not mean institution is existing for making profit. The predominant object test must be applied. The AO must verify the activities of the institution from year to year to allow exemption u/s 10(23C)(v) & (vi).
2015-ITRV-HC-BOM-171]	DIT (E) vs. M/s. Jasubhai Foundation	Bombay High Court	In computing the income of charitable institutions exempt u/s 11, income exempt u/s 10 has to be excluded. The requirement in s. 11 with regard to application of income for charitable purposes does not apply to income exempt u/s 10.
2015-ITRV-ITAT-DEL-177	M/s Devki Devi Foundation vs. DIT(E)	Delhi ITAT	Assessee's plea that poor patients do not come forward to avail of free medical treatment is not believable. The overall conduct of the assessee suggests that it is conducting its affairs in a commercial manner & not in a charitable manner to get exemption u/s 11/12A
2015-ITRV-ITAT-MUM-198	Mumbai Metropolitan Region Development Authority vs. DIT(E)	Mumbai ITAT	The issue of withdrawal of s. 11 exemption r.w. s. 12AA(3) in the light of s. 2(15) amendment is contentious and requires decision by larger Bench of the ITAT

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2015-ITRV-ITAT-CHD-227	ITO vs. Bhartiya Vidya Mandir Trust	Chandigarh ITAT	Charitable institutions are eligible to a blanket deduction of 15% of the gross receipts u/s 11(1)(a) without being required to satisfy any condition
2015-ITRV-ITAT-DEL-228	India International Centre vs. ADIT	Delhi ITAT	Before any activity can be branded as being in the nature of trade or commerce u/s 2(15), the AO has to demonstrate the intention of parties backed with facts and figures of carrying out activities with profit motive. Mere surplus from any activity which has been undertaken to achieve the dominant object does not imply that the same is run with profit motive to deny exemption u/s 11. The intention has to be gathered from circumstances which compelled the carrying on the activity
2015-ITRV-ITAT-DEL-229	Association of State Road Transport vs. CIT	Delhi ITAT	Explaining scope of proviso to s. 2(15) restricting deduction for charitable institutions held that expressions "trade", "commerce" and "business", must be read in the context of the intent and purport of s. 2(15) and cannot be interpreted to mean any activity which is carried on in an organized manner
2015-ITRV-ITAT-AMT-231	Kapurthala Improvement Trust vs. CIT	Amritsar ITAT	The Proviso to s. 2(15) has no bearing on the grant or denial of registration u/s 12AA. The applicability of the proviso has to be evaluated on a year to year basis and it only affects the grant of exemption u/s 11
2015-ITRV-ITAT-HYD-246	Institute for Development and Research in Banking Technology (IDRBT) vs. ADIT	Hyderabad ITAT	Explained the important principles of what is a "charitable purpose" for s. 11 and the scope of the proviso to section 2(15) of the Act
2015-ITRV-ITAT-PUNE-257	Deccan Education Society vs. ACIT	Pune ITAT	Explained the law on treating an educational institution as running with a profit motive u/s 10(23C)(iiiab) and treating the donations received by it as "capitation fee" on the basis of the allegation of the persons who have made the said donation

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DEDUCTIONS UNDER CHAPTER VIA

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-HC-GUJ-022	Empire Pumps Pvt. Ltd vs. ACIT	Gujarat High Court	Interest earned on fixed deposits placed out of business compulsion is "derived" from the undertaking for purposes of s. 80HHA / 80 IA
2015-ITRV-HC-MUM-027	CIT vs. Hermes Developers	Bombay High Court	Super built-up area cannot be equated with built-up area for the purposes of s. 80IB(10)
2015-ITRV-ITAT-HYD-053	DCIT vs. Coromandel International Ltd	Hyderabad ITAT	Excise duty refund is "derived" from the undertaking for s. 80-IB. Liberty India 316 ITR 218 (SC) is distinguishable
2015-ITRV-ITAT-PUNE-078	Gera Developments Pvt. Ltd vs. JCIT	Pune ITAT	S. 80-IB(10) deduction cannot be denied on the ground that the completion certificate has not been issued by the Municipality if the assessee has completed construction before the due date
2015-ITRV-HC-GUJ-086	DCIT vs. Sun Pharmaceuticals Ltd	Gujarat High Court	Despite the introduction of 'block of assets' depreciation cannot be thrust on the assessee while computing quantum of eligible deduction u/s. 80-IA/ 80HHC
2015-ITRV-HC-BOM-141	CIT vs. J. B. Boda & Co. P. Ltd	Bombay High Court	Chapter VI-A deductions are not limited to the business profits but are available to the extent of the Gross Total Income
2015-ITRV-ITAT-MUM-147	Deepi Arora vs. ITO	Mumbai ITAT	Though u/s 80-IA(5), the profits of the eligible unit has to be computed on the 'stand alone' principle, in a case where the assessee also has non-business income, the brought forward unabsorbed depreciation u/s. 32(2) has to be set off against the eligible profits before computing s. 80-IA deduction
2015-ITRV-SC-173	Jeyar Consultant & Investment Pvt. Ltd vs. CIT	Supreme Court	It is a pre-requisite that there must be profits from the export business for claiming deduction u/s 80HHC. If the exports business has suffered a loss, deduction u/s 80HHC cannot be allowed from domestic business
2015-ITRV-HC-GUJ-183	Niko Resources Limited vs. UOI	Gujarat High Court	The Explanation to Section 80-IB(9) inserted by Finance (No. 2) Act 2009 w.r.e.f. 1.4.2000 is ultra vires to Article

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			14 of the Constitution of India
2015-ITRV-SC-201	CIT vs. M/s Veena Developers	Supreme Court	Explained law on availability of deduction for "housing projects" u/s 80-IB(10)
2015-ITRV-SC-204	CIT vs. Sarkar Builders	Supreme Court	Restriction on extent of commercial area in "housing project" u/s 80-IB(10) imposed w.e.f. 1.4.2005 does not apply to housing projects approved before 1.4.2005 even though completed after 1.4.2005
2015-ITRV-HC-BOM-208	CIT vs. Continental Warehousing Corporation	Bombay High Court	No addition can be made u/s 153A in respect of an unabated assessment which has become final if no incriminating material is found during the search. An ICD is an "infrastructural facility" for s. 80-IA(4)
2015-ITRV-ITAT-AHD-252	Shri Umeya Corporation vs. ITO	Ahmedabad ITAT	To be the "developer" of a housing project u/s 80-IB(10), the assessee has to undertake the entrepreneurship risk in execution of the project. He need not be the owner of the land.

DEEMED DIVIDEND [SECTION 2(22)(e)]

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-HC-ALL-010	ACIT vs. Dhampur Sugar Mill Pvt. Ltd	Allahabad High Court	Interest expenditure attributable to a taxable business cannot be disallowed u/s. 14A/ Rule 8D. Expenditure on creating assets which do not belong to the assessee is revenue expenditure
2015-ITRV-HC-MUM-108	CIT vs. Jignesh P. Shah	Mumbai High Court	S. 2(22)(e) has to be construed strictly. If assessee is not a shareholder of lending co, s. 2(22)(e) does not apply even if funds are ultimately paid by Co in which assessee is a shareholder
2015-ITRV-ITAT-MUM-193	ITO vs. Dipti Nikhil Modi	Mumbai ITAT	S. 2(22)(e) is a deeming provision (deemed dividend) and has to be strictly construed. Assessee can discharge onus by pointing to 'preponderance of probability' and if explanation is not found to be false then, even

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			if amounts are assessed as 'deemed dividend', penalty cannot be levied u/s 271(1)(c)
2015-ITRV-ITAT-DEL-223	Ishwar Chand Jindal vs. ACIT	Delhi ITAT	Loans and advances given for business transaction between the parties does not fall within the definition of "deemed dividend" u/s 2(22)(e).

DEPRECIATION

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-HC-MUM-006	North Karnataka Expressway Ltd vs. CIT	Bombay High Court	The person who constructs a road on Build, Operate and Transfer (BOT) basis on land owned by the Government is not the "owner" of the road and cannot claim depreciation thereon
2015-ITRV-ITAT-BANG-067	M/s. Nandini Delux vs. ACIT	Bangalore ITAT	Revenue expenditure on leased premises is not hit by sub-section (1A) to s. 32 or Explanation 1 to s. 32.
2015-ITRV-ITAT-DEL-090	Minda Sai Limited vs. ITO	Delhi ITAT	Unabsorbed depreciation of AYs 1997-98 to 2001-02 is eligible for relief granted by amended s. 32(2) in AY 2002-03
2015-ITRV-HC-BOM-146	International Computers Indian Manufacture Ltd. vs. CIT	Bombay High Court	Expenditure allowable u/s 35D cannot be capitalized to asset for claim of depreciation u/s 32
2015-ITRV-SC-205	Seshasayee Paper & Boards Ltd vs. CIT	Supreme Court	The assessee has the right to disclaim depreciation in its entirety u/s 32. However, it cannot claim depreciation for the current year and disclaim unabsorbed depreciation u/s 32(2)

INCOME FROM HOUSE PROPERTY

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-ITAT-HYD-003	K. Raheja IT Park	Hyderabad ITAT	Explained law on whether income from rent for lease of space in technology park and

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	(Hyderabad) P. Ltd vs. CIT		income from operation and management of facilities is assessable as "business profits" or "income from house property"
2015-ITRV-ITAT-DEL-091	Manpreet Singh vs. ITO	Delhi ITAT	Rent received from mobile phone company for use of terrace to install antenna is taxable as "Income from house property" u/s 22 and not as "Other sources".
2015-ITRV-SC-203	Chennai Properties & Investments Ltd vs. CIT	Supreme Court	Explained law on whether income from letting of properties is assessable as "business profits" u/s 28 or as "Income from house property" u/s 22

INCOME FROM OTHER SOURCES

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-ITAT-MUM-084	Sannidhi C. Patel vs. ITO	Mumbai ITAT	Amounts received under a Power of Attorney for making investments cannot be treated as income in the hands of the recipient u/s 56(2)(vi)
2015-ITRV-ITAT-MUM-251	Panna S. Khatau vs. ITO	Mumbai ITAT	Old liabilities, even if treated as genuine in earlier years and even if on capital account, are liable to be assessed as "income" in year of write-back if assessee is unable to provide confirmations and substantiate genuineness of liabilities u/s 56(2) / 68

INTERNATIONAL TAXATION / TRANSFER PRICING

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-HC-KOL-001	P & O Nedlloyd Ltd. & Ors vs. ADIT	Kolkata High Court	Though a firm is not a "person" under UK law, it is so under the Indian law. Consequently, the firm is eligible for exemption under the India-UK DTAA. The department's contention that the firm is not eligible for benefits under the DTAA is not acceptable

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2015-ITRV-ITAT-MUM-019	ITO vs. Bennet Coleman & Co. Ltd	Mumbai ITAT	Separate agreements for supply & installation cannot be regarded as one composite contract. However, as the installation is an "assembly" project, it will not constitute "fees for technical services". Even if such services are FTS u/s 9(1)(vii) they are excluded from taxation in India by Article 14 of the India-Swiss DTAA as the recipient has no PE in India
2015-ITRV-ITAT-DEL-023	Toll Global Forwarding India Pvt Ltd vs. DCIT	Delhi ITAT	CUP method can be applied by a comparing a pricing formulae, rather than the pricing quantification in amount. Rule 10AB inserted w.e.f. 01.04.2012 is beneficial in nature and so retrospective w.e.f. 01.04.2002
2015-ITRV-ITAT-DEL-032	Tianjin Tianshi Biological Development Company Ltd vs. DCIT	Delhi ITAT	DRP's stand that determination of ALP by the TPO is of no relevance in deciding the issue of suppressed sale by the assessee is not correct. Fact that products are sold below MRP does not mean the sales are suppressed
2015-ITRV-ITAT-HYD-034	ADIT vs. Bartronics India Ltd	Hyderabad ITAT	Consideration for use of software is not assessable as royalty under Article 12 of DTAA and s. 9(1)(vi)
2015-ITRV-ITAT-DEL-035	ADIT vs. M/s I. M. Technologies	Delhi ITAT	Updated information not available at the time of the TP study but available at the stage of assessment has to be considered by AO for Transfer Pricing Assessment
2015-ITRV-ITAT-DEL-049	ACIT vs. Convergys India Service (P) Ltd	Delhi ITAT	Comparables with more than 25% RPTs have to be excluded for Transfer Pricing purposes. There are no fetters on the assessee's right to claim that a comparable included by him should be excluded
2015-ITRV-ITAT-DEL-050	DCIT vs. Alcatel India Limited	Delhi ITAT	ALP adjustments can only be made in respect of international transactions with the AEs and cannot extend to the transactions with non AEs for Transfer Pricing purposes
2015-ITRV-ITAT-DEL-051	XL India Business Services Pvt Ltd vs. ACIT	Delhi ITAT	After the expiry of the time limit for issue of s. 143(2) notice, the AO has no jurisdiction to make a reference to the TPO.

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2015-ITRV-ITAT-BANG-052	Toyota Kirloskar Auto Parts Pvt. Ltd vs. ACIT	Bangalore ITAT	Explained Law on aggregation of several international transactions to determine the Arms' Length Price under Transfer Pricing
2015-ITRV-ITAT-DEL-064	Calibrated Healthcare Systems India Pvt. Ltd vs. ACIT	Delhi ITAT	Companies which are functionally similar to the assessee cannot be excluded merely because of high or low turnover for Transfer Pricing purposes
2015-ITRV-ITAT-JBL-075	Birla Corporation Limited vs. ACIT	Jabalpur ITAT	Though construction, installation and assembly activities are de facto in the nature of technical services, the consideration thereof will not be assessable under Article 12 but will only be assessable under Article 7 if an "Installation PE" is created under Article 5. As Article 5 is a specific provision for installation etc, it has to prevail over Article 12
2015-ITRV-ITAT-DEL-076	Wrigley India Pvt Ltd vs. ACIT	Delhi ITAT	To apply the "Cost Plus Method", for Transfer Pricing purposes there must be a "comparable uncontrolled transaction". The fact that the same product is sold by the assessee to its AEs as well as to third parties does not mean that the two sets of transactions are comparable if the business model, marketing, sales promotion etc is different
2015-ITRV-ITAT-BANG-080	Yahoo Software Development India P.Ltd vs. DCIT	Bangalore ITAT	Comparables have to be excluded by the turnover filter without a FAR analysis being required to be conducted for Transfer Pricing purposes. The AO cannot rely on information obtained u/s 133(6)
2015-ITRV-ITAT-MUM-088	Watson Pharma Pvt Ltd vs. DCIT	Mumbai ITAT	Explained the law on making adjustments for 'risk' and 'location savings' under Transfer Pricing
2015-ITRV-ITAT-PAN-089	ACIT vs. Indian Furniture Products Limited	Panaji ITAT	Usance charges paid by the assessee on import of raw material from foreign countries attracts tax in India u/s 5(2)(b) r.w.s. 9(1)(v)(b) and tax is deductible u/s 195(1), non-deduction would result in disallowance u/s 40(a)(i)
2015-ITRV-ITAT-HYD-	Mylan Laboratories Ltd vs. ACIT	Hyderabad ITAT	ALP of interest on loan granted to European AE has to be based on Euribor.

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2015-ITRV-ITAT-JPR-101	ACIT vs. Gillette India Ltd	Jaipur ITAT	Penalty u/s 271G for non-filing of transfer pricing documents u/s 92D cannot be levied in a general manner
2015-ITRV-ITAT-MUM-105	Goldstar Jewellery Limited vs. JCIT	Mumbai ITAT	While delay in recovery of debt from AE is an "international transaction", it is a part of the transaction of sale and its ALP has to be evaluated on an overall basis for Transfer Pricing purposes
2015-ITRV-ITAT-HYD-106	Anil Bhansali vs. ITO	Hyderabad ITAT	Examined the taxability of stock options allotted outside India by foreign co to NOR employee for services rendered in India considered u/s. 5(1) r.w. Art 16(1) of DTAA
2015-ITRV-ITAT-HYD-113	R.A.K. Ceramics India Pvt. Ltd vs. DCIT	Hyderabad ITAT	TPO/ DRP's action of reducing the quantum of royalty paid to AE by applying the "benefit test" is surprising and improper
2015-ITRV-HC-BOM-127	CIT vs. Tata Autocomp Systems Ltd	Bombay High Court	Department while making Transfer Pricing Assessment is not entitled to challenge the ITAT's decision to determine the interest rate ALP of funds advanced to AE as per Euribor if the earlier ITAT judgements relied upon by ITAT have not been challenged by the Dept.
2015-ITRV-ITAT-MUM-135	Swiss Re-insurance Company Limited vs. DDIT	Mumbai ITAT	Establishing subsidiary in other treaty country does not result in creating PE of a foreign holding company in the third country. As the employees of SRSIPL are not providing services to the assessee as if they were the employees of the assessee, there is no "service PE".
2015-ITRV-SC-137	GVK Industries Ltd vs. ITO	Supreme Court	Explained the concept of "source rule" vs. "residence rule" u/s 9(1)(i). Also definition of expression "fees for technical services" in s. 9(1)(vii) was explained with reference to "consultancy" services
2015-ITRV-HC-DEL-153	Sony Ericsson Mobile Communications India Pvt. Ltd vs. CIT	Delhi High Court	The "bright line test" has no statutory mandate and a broad-brush approach is not mandated or prescribed for Transfer Pricing purposes. Parameters specified in paragraph 17.4 of Special Bench verdict in L. G. Electronics are not binding on the

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			assessed or the Revenue. Matter remanded to the Tribunal for de novo consideration because the legal standards or ratio accepted and applied by the Tribunal was erroneous
2015-ITRV- HC-DEL-175	CIT vs. Cotton Naturals (I) Pvt. Ltd	Delhi High Court	Discussed the entire law on determining Arms Length Price of transaction of loan of money to Associated Enterprise for Transfer pricing purposes
2015-ITRV- ITAT-DEL-176	Kusum Healthcare Pvt. Ltd vs. ACIT	Delhi ITAT	While an adjustment for working capital investment is required, the transaction of sale of goods and receivables arising therefrom can be aggregated. If the differential impact of working capital has been factored in the pricing of the transaction of sale, no further adjustment can be made for Transfer Pricing
2015-ITRV- HC-BOM-210	DIT vs. B4U International Holdings Limited	Bombay High Court	Indian agent of foreign company cannot be regarded as "Dependent Agent Permanent Establishment" if agent has no power to conclude contracts. If the agent is remunerated at arms' length basis, no further profit can be attributed to the foreign company. It is doubtful whether retrospective amendment to s. 9(i)(vi) can apply the DTAA. However, question is left open
2015-ITRV- HC-BOM-211	DIT vs. A. P. Moller Maersk A/S	Bombay High Court	Amount paid by Indian entities as "share of cost" of utilizing automated telecommunications system is not assessable as "fees for technical services" u/s. 9(1)(vii)/ Article 13(4) if there is not profit element in it
2015-ITRV- ITAT-DEL-213	Aspect Software Inc vs. ADIT	Delhi ITAT	Consideration for supply of software (whether with or without equipment) is not taxable as "royalty" if there is no transfer of right in the copyright to the software
2015-ITRV- HC-DEL-217	CIT vs. Grup ISM P. Ltd	Delhi High Court	Explained the meaning of expressions "consultancy services" and "independent personal services" in the context of Article 12 of DTAA and s. 9 of IT Act
2015-ITRV- ITAT-MUM-	ACIT vs. Information Systems	Mumbai ITAT	The transaction of allowing credit period to the Associated Enterprise on

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221	Resource Centre Pvt. Ltd		realisation of sale proceeds is not an independent transaction and has to be considered along with the main international transaction of sale of goods for Transfer Pricing purpose
2015-ITRV-SC-245	Oil & Natural Gas Corporation Limited vs. CIT	Supreme Court	The "pith and substance" test has to be applied to determine the dominant purpose of each agreement. If the dominant purpose is mining, the income is assessable only u/s 44BB and not as "fees for technical services" u/s 9(1)(vii) & 44D
2015-ITRV-ITAT-AHD-249	Soma Textile & Industries Limited vs. ACIT	Ahmedabad ITAT	Even if the loan to the 100% subsidiary is intended to be a long term investment in the subsidiary and it has a crucial role to play in the assessee's business plans, it cannot be treated as "quasi capital". The ALP of the loan has to be determined on the basis of LIBOR interest for Transfer Pricing Purposes
2015-ITRV-ITAT-MUM-262	Tecnimont ICB House vs. DCIT	Mumbai ITAT	Reiterated the important principles on benchmarking transactions of advances/ credit period to AEs under Transfer Pricing
2015-ITRV-ITAT-DEL-263	HCL Technologies BPO Services Ltd vs. ACIT	Delhi ITAT	For the purpose of Transfer pricing benchmarking the international transactions, the effect of underutilization of capacity/excess fixed costs has to be eliminated while computing the operating margins of the assessee
2015-ITRV-ITAT-DEL-264	ITO vs. Nokia India Pvt. Ltd	Delhi ITAT	Explained the entire law on taxability of "fees for technical services" under the "make available" clause of the DTAA
2015-ITRV-HC-BOM-275	DIT vs. Credit Agricole Indosuez	Bombay High Court	Interest on income-tax refund u/s 244A received by a non-resident is not effectively connected with the PE (Permanent Establishment) either on asset test or activity test. Accordingly such interest cannot be assessed as business profits but has to be assessed as "interest" under Article 11/ 12 of DTAA

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MINIMUM ALTERNATIVE TAX (MAT)

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-ITAT-DEL-090	Minda Sai Limited vs. ITO	Delhi ITAT	In the absence of exempt income, s. 14A disallowance cannot be added to s. 115JB book profits even if assessee has accepted s. 14A disallowance in the normal computation
2015-ITRV-HC-DEL-131	Srei Infrastructure Finance Ltd vs. ACIT	Delhi High Court	Explaining the distinction between "reserve" & "provision" held that Statutory reserve created u/s 45-IC of RBI Act is not a "diversion of income at source" and is not a provision but is like any other reserve and cannot be excluded from book profits for purposes of s. 115JB
2015-ITRV-ITAT-MUM-235	Dharmayug Investments Ltd vs. ACIT	Mumbai ITAT	In computing the "book profits" u/s 115JB the entire capital gains have to be included without computing the benefits of indexation
2015-ITRV-HC-BOM-276	CIT vs. Bisleri Sales Ltd	Bombay High Court	Amount credited to reserves without a corresponding debit to the P&L A/c cannot be added to the "book profits" u/s 115JA

MISCELLANEOUS

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-HC-DEL-047	Naresh Trehan vs. Rakesh Kumar Gupta	Delhi High Court	Income-tax returns are confidential and cannot be disclosed under the RTI Act except where disclosure is in public interest and outweighs possible harm to the assessee
2015-ITRV-ITAT-AGRA-024	M/s Vijay Veer Singh vs. ITO	Agra ITAT	Disallowance u/s 184(5) of interest, salary etc paid by a firm to partners cannot be made if the Best Judgement assessment u/s 144 is due to incompleteness of accounts and not due to failures referred to in s. 144

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PENALTIES

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-ITAT-IND-011	DCIT vs. Nepa Limited	Indore ITAT	Penalty u/s 271(1)(c) initiated without specifying whether it is for concealment or for furnishing inaccurate particulars is invalid
2015-ITRV-ITAT-DEL-012	Poysha Goyal vs. ACIT	Delhi ITAT	No penalty u/s 271(1)(c) can be levied for a bona fide "wrong" claim which is not a "false" claim
2015-ITRV-HC-GUJ-015	Mitsu Industries Ltd vs. DCIT	Gujarat High Court	In the absence of a clear-cut finding by the AO as to whether it is a case of 'concealment' or 'furnishing inaccurate particulars', penalty u/s 271(1)(c) cannot be levied
2015-ITRV-ITAT-MUM-016	ACIT vs. Crescent Property Developers	Mumbai ITAT	No penalty can be levied u/s 271(1)(c) solely on the basis of admission made during survey if there is no corroborative evidence and no fault is found with the return of income
2015-ITRV-HC-MUM-025	CIT vs. Rucha Engineers Pvt. Ltd	Mumbai ITAT	Before proceeding to the Explanation below s. 271 and putting the responsibility on the assessee, it is necessary for the AO to first demonstrate that the assessee's explanation or conduct is not reasonable on human probabilities, or that it was in the nature of violating settled legal positions. If the explanation is not fanciful, baseless or unacceptable, penalty cannot be levied u/s 271(1)(c).
2015-ITRV-HC-GUJ-042	Amrut Tubewell Company vs. ACIT	Gujarat High Court	Penalty u/s. 271(1)(c) & 273(2)(a) cannot be mechanically levied. Cogent reasons have to be given
2015-ITRV-ITAT-MUM-077	Schrader Duncan Limited vs. ACIT	Mumbai ITAT	If the High Court admits the appeal u/s 260A, it means that the issue is debatable and penalty cannot survive u/s 271(1)(c).
2015-ITRV-ITAT-MUM-083	ACIT vs. Sunland Metal Recycling	Mumbai ITAT	Even if s. 50C is applicable, computing capital gain de hors it does not amount to furnishing inaccurate particulars of income or concealment of income for levy of penalty u/s 271(1)(c)
2015-ITRV-ITAT-DEL-098	Fortune Polymers Industries Pvt. Ltd vs. DCIT h	Delhi ITAT	Penalty u/s 271(1)(c) cannot be levied for an assessment made in a cursory & summary manner

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2015-ITRV-ITAT-JPR-101	ACIT vs. Gillette India Ltd	Jaipur ITAT	Penalty u/s 271G for non-filing of transfer pricing documents u/s 92D cannot be levied in a general manner
2015-ITRV-ITAT-MUM-129	Prema Gopal Rao vs. DCIT	Mumbai ITAT	Revised return of Income filed after issue of s. 143(2) notice amounts to voluntary disclosure if AO has not sought specific notice in the notice, hence there can be no penalty u/s 271 (1) (c)
2015-ITRV-ITAT-MUM-133	ACIT vs. Prakash Steelage Ltd	Mumbai ITAT	Law on applicability of s. 271AAA penalty in the context of a voluntary disclosure u/s 132(4). Also difference between s. 271(1)(c) and 271AAA explained
2015-ITRV-HC-BOM-143	CIT vs. M/s S. M. Construction	Bombay High Court	Law laid down for penalty u/s 271(1)(c) in Zoom Comm 327 ITR 510 (Del) does not apply if claim of assessee is bona fide and not in defiance of the law
2015-ITRV-ITAT-MUM-160	Shubhmangal Portfolio Pvt. Ltd vs. CIT	Mumbai ITAT	Disclosing income but classifying it under a wrong head amounts to furnishing inaccurate particulars and attracts penalty u/s 271(1)(c)
2015-ITRV-ITAT-MUM-182	Rushi Builders and Developers vs. ACIT	Mumbai ITAT	Disallowance of expenditure u/s 40(a)(ia) for failure to deduct TDS does not attract penalty u/s 271(1)(c)
2015-ITRV-ITAT-MUM-185	Trans Polyurethane Pvt. Ltd vs. DCIT	Mumbai ITAT	Mistake in claiming deduction of interest expenditure despite amount disallowable u/s. 43B attracts penalty u/s 271(1)(c).
2015-ITRV-ITAT-MUM-186	DCIT vs. Aanjaneya Life Care Ltd	Mumbai ITAT	Penalty u/s 221(1) cannot be levied for non-payment of self Assessment tax if the assessee has financial hardship
2015-ITRV-ITAT-DEL-189	ITO vs. JKD Capital & Finlease Ltd	Delhi ITAT	For penalty proceedings initiated on issues unrelated to assessment of income (such as for s. 269SS/ 269T & TDS defaults), time limit u/s 275(1)(a) runs from date of initiation of penalty proceedings and not from date of CIT(A)'s order
2015-ITRV-ITAT-MUM-193	ITO vs. Dipti Nikhil Modi	Mumbai ITAT	S. 2(22)(e) is a deeming provision (deemed dividend) and has to be strictly construed. Assessee can discharge onus by pointing to 'preponderance of probability' and if explanation is not found to be false then, even if amounts are assessed as 'deemed dividend', penalty cannot be levied u/s 271(1)(c)
2015-ITRV-	Heranba	Mumbai	Surrender of income after questionnaire does

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ITAT-MUM-195	Industries Ltd vs. DCIT	ITAT	not mean it is not voluntary. However, if surrender is on condition of no penalty and assessment is based only on surrender and not on evidence, penalty cannot be levied u/s 271(1)(c)
2015-ITRV-HC-GUJ-199	Kirit Dayabhai Patel vs. ACIT	Gujarat High Court	Immunity against penalty under Explanation 5 of s. 271(1)(c) is available even in return is not filed provided a statement is made during the search, explaining the manner of deriving the income and due tax & interest thereon is paid
2015-ITRV-ITAT-KOL-237	KPC Medical College & Hospital vs. DCIT	Kolkata ITAT	Explained the law on levy of penalty u/s 271(1)(c) in a case where satisfaction is recorded in s. 153C/153D assessments by AO who is common to the searched party and the assessee
2015-ITRV-ITAT-DEL-238	CIT vs. Mahagun Technologies Pvt. Ltd	Delhi ITAT	s. 269SS does not apply to non-monetary book entry transactions of loans and advances and penalty is not leviable u/s 271D
2015-ITRV-ITAT-DEL-239	ITO vs. Pandit Vijay Kant Sharma	Delhi ITAT	Explained the law on time limit u/s 271(1)(a) for passing penalty order u/s 271(1)(c). Challenge by assessee to validity of penalty order entertained in Dept's appeal despite lack of C. O. /cross-appeal by assessee
2015-ITRV-ITAT-KOL-244	SPS Steel & Power Ltd vs. ACIT	Kolkata ITAT	Explained the law on what is "undisclosed income" and levy of penalty u/s 271AAA on the basis of a "dumb" document and surrender by the assessee
2015-ITRV-ITAT-MUM-268	Parin K. Rajwani vs. JCIT	Mumbai ITAT	The limitation period to impose penalty u/s 275 (1)(c) has to be computed from the date of issue of the show-cause notice by the AO. Penalty u/s 271D should not be levied if circumstances show that there was no intention to contravene the law u/s 269SS
2015-ITRV-HC-BOM-273	CIT vs. Dalmia Dyechem Industries	Bombay High Court	<ul style="list-style-type: none"> • The rigors of penalty provisions u/s 271(1)(c) cannot be diluted only because a small number of cases are picked up for scrutiny. • No penalty can be levied unless if assessee's conduct is "dishonest, malafide and amounting concealment of facts". • The AO must render the "conclusive finding" that there was "active

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			concealment" or "deliberate furnishing of inaccurate particulars"
2015-ITRV-HC-BOM-274	Reliance Industries Ltd vs. CIT	Bombay High Court	<ul style="list-style-type: none"> • Penalty for failure to pay TDS in time u/s 221 can be levied even if the assessee voluntarily pays the TDS. • Financial hardship, diverse locations and lack of computerization are not good excuses. • The fact that CIT(A) decided in favour of the assessee & deleted the penalty does not necessarily mean that two views are possible
2015-ITRV-ITAT-MUM-284	DCIT vs. Cybertech Systems & Software P. Ltd.	Mumbai ITAT	Claim that interest income is eligible for s. 10B exemption, though upheld by the ITAT for an earlier year, is so implausible that it attracts penalty for concealment/ furnishing inaccurate particulars of income u/s 271(1)(c)

RE-ASSESSMENT / RE-OPENING / SECTIONS 147 / 148

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-ITAT-DEL-045	ITO vs. M. B. Jewellers P. Ltd	Delhi ITAT	Reopening mechanically u/s 147 / 151 on the basis of material received from another AO is bad. Merely noting "approved" without recording satisfaction is bad
2015-ITRV-ITAT-DEL-051	XL India Business Services Pvt Ltd vs. ACIT	Delhi ITAT	The TPO's report cannot form the basis for reopening the assessment u/s 147
2015-ITRV-HC-MUM-059	Allanasons Limited vs. DCIT	Bombay High Court	The words "failure to disclose material facts" is not a magician's mantra & the failure to use those words will not by itself oust jurisdiction to reassess u/s 147 if the reasons as a whole implies a failure to disclose material facts
2015-ITRV-HC-MUM-060	Nickunj Eximp Enterprises Pvt. Ltd vs. ACIT	Bombay High Court	A writ petition is not like an appeal where the assessee has a statutory right to require the Court to entertain the challenge. A writ will be maintained only if the notice is clearly

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			without jurisdiction u/s 147 & not otherwise
2015-ITRV-HC-MUM-061	Eskay K'n' IT (India) Ltd vs. DCIT	Bombay High Court	A "finding" is one that is necessary for the disposal of an appeal in respect of an assessment of a particular year [s. 147/150(1)]
2015-ITRV-HC-MUM-103	Donaldson India Filters Systems Pvt. Ltd vs. DCIT	Delhi High Court	Assessment cannot be reopened u/s 147 in the absence of "fresh material".
2015-ITRV-ITAT-MUM-128	GTL Limited vs. ACIT	Mumbai ITAT	Non-mentioning in the reasons that approval has been obtained from the CIT vitiates the reopening u/s 147 / 151
2015-ITRV-SC-136	The Indian Hume Pipe Co Ltd vs. ACIT	Supreme Court	Nullifying verdict of Bombay High Court in The Indian Hume Pipe Co Ltd vs. ACIT 348 ITR 439 that "full & true disclosure of material facts" means "specific" disclosure of "each" fact
2015-ITRV-HC-BOM-138	CIT vs. Jet Speed Audio Pvt. Ltd	Bombay High Court	S. 143(3) assessment order is not a scrap of paper & AO is expected to have applied his mind. Reopening u/s 147 on ground of "oversight, inadvertence or mistake" is not permissible
2015-ITRV-ITAT-LKN-155	Sardar Balbir Singh vs. ITO	Lucknow ITAT	Sanction of CIT instead of JCIT renders reopening void u/s 147 / 151. The error cannot be saved u/s 292BB
2015-ITRV-ITAT-DEL-165	Bir Bahadur Singh Sijwali vs. ITO	Delhi ITAT	Reopening an assessment u/s 147 on the ground that there is need of an inquiry which may result in detection of an income escaping assessment is not valid
2015-ITRV-ITAT-DEL-166	Direct Sales Pvt. Ltd vs. ITO	Delhi ITAT	Merely stating "Approved" is not sufficient sanction of CIT and renders reopening void u/s 147 / 151
2015-ITRV-HC-BOM-174	Tata Business Support Services Ltd vs. DCIT	Bombay High Court	The notice u/s 148 should not be in a standard format but indicate why s. 147 has been resorted to. The term "failure to disclose material facts" has a specific legal connotation. The non-disclosure has to of a "material fact" to attract s. 147
2015-ITRV-HC-BOM-179	Plus Paper Food Pac Ltd vs. ITO	Bombay High Court	If the recorded reasons show contradiction and inconsistency it means necessary satisfaction in terms of the statutory provision has not been recorded at all. The Court cannot be called upon to indulge in guess work or speculate as to which reason

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			has enabled the AO to act in terms of s. 147
2015-ITRV-ITAT-DEL-180	Suresh Chandra vs. ITO	Delhi ITAT	Failure to comply with the procedure prescribed in G.K.N. Drive Shaft (India) Ltd. vs. ITO 259 ITR 19 (SC) renders the assessment order u/s 147 invalid & void ab initio
2015-ITRV-HC-BOM-184	Nivi Trading Limited vs. UOI	Bombay High Court	Reopening u/s 147 (even of s. 143(1) assessment) on the ground that a specific aspect requires verification is not permissible

SECTION 10A / 10B

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-ITAT-MUM-095	ACIT vs. S. K. International (Export) Co	Mumbai ITAT	The argument that s. 10B(4) lays down a computational formula and that all business profits (including DEPB receipts) should be eligible for deduction irrespective of the effective source is not acceptable
2015-ITRV-HC-DEL-140	CIT vs. Hritnik Exports Pvt. Ltd	Delhi High Court	All business profits of the undertaking are eligible for deduction u/s 10B(4) and it is not necessary to show that they have a "direct nexus" with the undertaking
2015-ITRV-HC-DEL-156	CIT vs. Kei Industries Ltd	Delhi High Court	Loss suffered in s. 10A/10B units cannot be set-off against the profits of taxable units

SECTION 14A / RULE 8 D

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-ITAT-DEL-104	ITO vs. Pioneer Radio Training Services Pvt. Ltd	Delhi ITAT	<ul style="list-style-type: none"> • Expenditure (like audit fees) required to be incurred irrespective of income cannot be disallowed u/s 14A / Rule 8D. • Investments in subsidiaries are not to earn dividend income and cannot be considered for disallowance u/s 14A / 8D
2015-ITRV-	CIT vs. Taikisha	Delhi High	No disallowance can be made u/s 14A if AO

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HC-DEL-118	Engineering India Ltd	Court	does not record satisfaction with reference to accounts that assessee's claim is improper. However, if Rule 8D applies, assessee's claim that interest is not disallowable on ground of "own funds" is not acceptable.
2015-ITRV-HC-DEL-119	Joint Investments Pvt. Ltd vs. CIT	Delhi High Court	S. 14A & Rule 8D cannot be interpreted to mean that the entire tax exempt income can be disallowed
2015-ITRV-ITAT-MUM-123	Daga Global Chemicals Pvt. Ltd vs. ACIT	Mumbai ITAT	Disallowance u/s 14A r.w Rule 8D cannot exceed the exempt income
2015-ITRV-HC-DEL-172	ACB India Ltd. vs. ACIT	Delhi High Court	Disallowance u/s 14A while computing the "average value of investment" under R. 8D(2)(iii), only the investments yielding non-taxable income have to be considered and not all investments
2015-ITRV-HC-BOM-202	CIT vs. India Advantage Securities Ltd	Bombay High Court	No s. 14A and Rule 8D disallowance can be made for shares held as stock-in-trade
2015-ITRV-ITAT-LKN-247	U. P. Electronics Corporation Ltd vs. DCIT	Lucknow ITAT	<ul style="list-style-type: none"> Investments in subsidiaries & joint ventures are for strategic purposes and not for earning dividend and so the expenditure cannot be disallowed u/s 14A & Rule 8D. If the AO does not deal with the assessee's submissions and merely says "not acceptable" it means he has not recorded proper satisfaction

SECTION 28 / 36 / 37 / OTHER BUSINESS DEDUCTIONS

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-HC-GUJ-018	Bipinchandra K. Bhatia vs. DCIT	Gujarat High Court	Even if the business is illegal, a loss which is incidental to such business has to be allowed u/s 28 and the Explanation to s. 37(1) has no bearing
2015-ITRV-ITAT-MUM-054	ACIT vs. Clariant Chemicals (I) Ltd	Mumbai ITAT	Non-compete fee to ex-MD is revenue expenditure u/s 37(1)
2015-ITRV-	B. R. Films vs.	Mumbai	Explained the important law on recognition

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ITAT-MUM-102	ACIT	ITAT	of revenue in the context of taxability of advance received for transfer of home video & satellite broadcasting for a period of five years
2015-ITRV-HC-BOM-139	CIT vs. Chemosyn Ltd	Bombay High Court	Expenditure on buy-back of shares of warring shareholders is business expenditure
2015-ITRV-SC-142	Premier Breweries Ltd vs. CIT	Supreme Court	Reiterated principles for deduction of business expenditure u/s 37(1)
2015-ITRV-ITAT-MUM-148	IDBI Capital Market Services Ltd vs. DCIT	Mumbai ITAT	Mark-to-market loss on interest rate swap contracts is not a notional loss.
2015-ITRV-ITAT-MUM-152	ACIT vs. Boots Piramal Health Care Ltd	Mumbai ITAT	Loss due to fraud & financial irregularities has to be allowed in the year of detection u/s 29 / 37(1) which is in line with Board circular No.35D(XLVII- 20)(F.No.10/48/65-IT(A-I) dated 24.11.1965
2015-ITRV-SC-162	Taparia Tools Ltd vs. JCIT	Supreme Court	Normally revenue expenditure incurred in a particular year has to be allowed in that year and if the assessee claims that expenditure in that year, the Department cannot deny the same [s.36(1)(iii) / 37(1)]. Fact that assessee has deferred the expenditure in the books of account is irrelevant. However, if the assessee himself wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of 'Matching Concept' is satisfied.
2015-ITRV-HC-CAL-164	Binani Cement Ltd vs. CIT	Calcutta High Court	Expenditure on an aborted capital project is revenue in nature & can be claimed as deduction u/s 37(1) in year of abandoning the project
2015-ITRV-ITAT-MUM-222	Preimus Investment And Finance Ltd vs. DCIT	Mumbai ITAT	Even if no business is carried, the expenditure incurred to maintain the corporate entity has to be allowed as a deduction u/s 37(1).
2015-ITRV-HC-DEL-258	CIT vs. SMCC Construction India Ltd	Delhi High Court	The very nature of a license agreement is that it is not of a permanent nature. The fact that the payment is spread over a period of 10 years does not make the assessee the owner of the technical knowhow. The payment is not of an enduring nature and

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			allowable as revenue expense u/s 37(1)
2015-ITRV-HC-BOM-282	CIT vs. Pudumjee Pulp & Paper Mills Ltd	Bombay High Court	The principal part of the Inter-corporate Debt (ICD) can be claimed as a bad debt u/s 36(1)(vii) if the interest thereon has been offered to tax in some year pursuant to s. 36(2).

SECTION 41

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-HC-MUM-066	CIT vs. Sulzer India Limited	Bombay High Court	Payment of Net Present Value of sales-tax deferral loan does not constitute a taxable "benefit" u/s 41(1).
2015-ITRV-ITAT-MUM-150	Bharat Dana Bera vs. ITO	Mumbai ITAT	Failure to establish genuineness of old liabilities means that there is a remission/cessation of such liabilities taxable u/s 41(1) not s. 68
2015-ITRV-ITAT-MUM-151	Genre Exports Private Limited vs. ITO	Mumbai ITAT	Applying common sense approach, unclaimed liabilities are assessable as income even if not credited to P&L A/c & is shown as a liability if creditor has written off the debt
2015-ITRV-ITAT-MUM-226	Natural Gas Company Pvt. Ltd vs. DCIT	Mumbai ITAT	Unclaimed liabilities are deemed to have been remitted/ ceased and are taxable u/s 41(1) in the year of discovery by AO
2015-ITRV-ITAT-BLR-283	Glen Williams vs. ACIT	Bangalore ITAT	Referring to Shri Vardhaman Overseas Ltd 343 ITR 408 (Del) has held that old unclaimed liabilities which are not written back by the assessee can neither be assessed as "cash credits" u/s 68 nor assessed u/s 41(1) as "remission or cessation of liability".

SECTION 43B

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-ITAT-MUM-085	ITO vs. Indore Steel and Iron Mills Ltd	Mumbai ITAT	High Court verdict in Hindustan Organics Chemicals 270 CTR 478 (Bom) decides that employees' contribution to PF u/s 36(1)(va) is eligible for s. 43B even though that was not the issue before it. It also does not refer to

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			any judicial precedents. Also, the Question framed by the dept and its representation before the High Court leaves much to be desired. However, the judgement is binding and has to be followed
2015-ITRV-SC-207	Travancore Sugars & Chemicals Ltd	Supreme Court	"Vend fee" paid by the assessee to the Government, even if of the nature of "privilege fee" falls within the expression "fee by whatever name called" u/s 43B and would be allowed when actually paid by the assessee
2015-ITRV-HC-DEL-215	CIT vs. M. M. Aqua Technologies Ltd	Delhi High Court	Conversion of outstanding interest into a loan does not amount to an "actual payment" of the interest and so deduction for the interest cannot be claimed under Explanation 3C of s. 43B
2015-ITRV-ITAT-AHD-241	DCIT vs. Jyoti Ltd.	Ahmedabad ITAT	Conversion of outstanding interest into a loan does not constitute "actual payment" of the interest so as to qualify for deduction u/s 43B (e).

SECTION 68

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-ITAT-MUM-150	Bharat Dana Bera vs. ITO	Mumbai ITAT	Failure to establish genuineness of old liabilities means that there is a remission/cessation of such liabilities taxable u/s 41(1) not s. 68
2015-ITRV-HC-DEL-167	CIT vs. Jansampark Advertising & Marketing (P) Ltd	Delhi High Court	Assessment proceedings under the Income Tax Act are not a game of hide and seek. If AO does not conduct proper inquiry u/s 68, the obligation to do so is on the CIT(A) & ITAT
2015-ITRV-ITAT-DEL-178	ITO vs. Neelkanth Finbuild Ltd	Delhi ITAT	Even if the issue share capital is bogus, no addition can be made in assessee's hands u/s 68 if identity of shareholder is established. Assessee is not required to show source of shareholder's funds. [Note: s. 68 has been amended for establishing source of source from AY 2013-14]

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2015-ITRV-ITAT-MUM-191	ITO vs. Shamim M. Bharwani	Mumbai ITAT	Despite documentary evidence and broker's confirmation, genuineness of penny stock transactions has to be determined on the basis of 'preponderance of human probabilities'. If assessee is unable to explain 'intriguing' facts and circumstances, genuineness of transaction cannot be accepted u/s 68
2015-ITRV-ITAT-MUM-192	Rita Stephen Pinto vs. ITO	Mumbai ITAT	Only credits received during the year can be assessed as unexplained cash credits u/s 68. Credits of earlier years, even if unexplained, cannot be assessed and such mistake can be rectified u/s 154
2015-ITRV-ITAT-MUM-251	Panna S. Khatau vs. ITO	Mumbai ITAT	Old liabilities, even if treated as genuine in earlier years and even if on capital account, are liable to be assessed as "income" in year of write-back if assessee is unable to provide confirmations and substantiate genuineness of liabilities u/s 56(2) / 68
2015-ITRV-HC-BOM-260	R. W. Promotions P. Ltd vs. ACIT	Bombay High Court	Reliance on statements of third party without giving the assessee the right of cross-examination results in breach of principles of natural justice
2015-ITRV-ITAT-HYD-269	KLR Industries Ltd vs. DCIT	Hyderabad ITAT	If the assessee has furnished the details of the creditors with their PAN, the onus is on the AO to examine their credit-worthiness and source of payment to assessee to make addition u/s 68

SECTION 269SS / 269T

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-ITAT-DEL-094	ACIT vs. M/s Vardaan Fashion	Delhi ITAT	Loan & deposit by way of journal entries are not covered u/s 269SS. Transactions between a firm and its partner are also not covered u/s 269SS
2015-ITRV-HC-DEL-109	CIT vs. M/s Muthoot Financiers	Delhi High Court	Transaction of loan between a firm and its partner does not attract s. 269SS. If other High Courts have taken a consistent view, that should be followed even if opposite view

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			is possible
2015-ITRV-ITAT-MUM-149	Chemfert Traders (Bombay) Pvt. Ltd vs. ACIT	Mumbai ITAT	If assessee's plea about compulsion to pay/ receive loans in cash is not disputed, the violation of s. 269SS/269T is deemed to be bonafide and does not attract penalty u/s 271D/ 271E
2015-ITRV-ITAT-DEL-238	CIT vs. Mahagun Technologies Pvt. Ltd	Delhi ITAT	s. 269SS does not apply to non-monetary book entry transactions of loans and advances and penalty is not leviable u/s 271D

SEARCH AND SEIZURE / SURVEY

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-HC-KOL-007	B. Kishore Kumar vs. DCIT	Kolkata High Court	Admission of undisclosed income by assessee constitutes good evidence in search cases. Loose sheets found during search can be relied upon
2015-ITRV-ITAT-DEL-020	ACIT vs. Inlay Marketing Pvt. Ltd	Delhi ITAT	Explained the entire law on recording of satisfaction by the AO and limitation period u/s 153A/153C
2015-ITRV-HC-MAD-026	CIT vs. V. D. Muralidharan	Madras High Court	Issue of notice u/s 158BD to the non-searched party has to be within the within the two years period given to the AO for completion of block assessment u/s 158BE(1).
2015-ITRV-ITAT-DEL-031	R. L. Allied Industries vs. ITO	Delhi ITAT	As per proviso to s. 153C, the date of receiving books of account or documents shall be considered the date of search. Therefore, under proviso to s. 153C and s. 153A(1)(b), in the case of person in whose case action is required u/s 153C, the AO is empowered to take action u/s 153C for the year in which the seized document is received by him and the preceding six years
2015-ITRV-ITAT-MUM-036	ITO vs. Vandana Properties	Mumbai ITAT	A statement given u/s 133A(iii) is not on oath and can be retracted. Even a statement on oath does not create any estoppel and can be retracted
2015-ITRV-ITAT-DEL-037	DCIT vs. Aakash Arogya Mindir	Delhi ITAT	Whenever a document is found from a person who is being searched u/s 153C the

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	P.Ltd		normal presumption is that the said document belongs to that person. It is for the AO to rebut that presumption and come to a conclusion or "satisfaction" that the document in fact belongs to somebody else based on cogent material
2015-ITRV-HC-DEL-039	Pepsi India Holdings Private Ltd vs. ACIT	Delhi High Court	S. 153C cannot be invoked unless the AO is satisfied for cogent reasons that the seized documents do not belong to the searched person. Finding of photocopies with the searched person does not mean they "belong" to the person holding the originals. The distinction between "belongs to" and "relates to" or "refers to" must be borne in mind by the AO
2015-ITRV-ITAT-BANG-067	M/s. Nandini Delux vs. ACIT	Bangalore ITAT	<ul style="list-style-type: none"> • Even in non-pending assessments where no incriminating material is found during search, AO is not limited to assessing "undisclosed" income u/s 153A. • Even income voluntarily disclosed in search is liable for s. 234B/C interest
2015-ITRV-ITAT-DEL-096	Tanvir Collections Pvt. Ltd vs. ACIT	Delhi ITAT	Even if the AO of the person searched and the 'other person' is the same, the recording of satisfaction by the AO having jurisdiction over the person searched is an essential and prerequisite condition for bestowing jurisdiction to the AO of the 'other person' u/s 153C. Impact of amendment by Finance (No. 2) Act 2014 w.e.f. 1.10.2014 considered
2015-ITRV-ITAT-MUM-134	Jignesh P. Shah vs. DCIT	Mumbai ITAT	Relying on Bombay High Court in CIT Vs. M/s. Murli Agro Products Ltd. has held that assessments which have attained finality cannot be disturbed or varied u/s 153A if no incriminating material is found during search qua the addition made
2015-ITRV-ITAT-AHD-157	ACIT vs. Kunvarji Finance Pvt. Ltd	Ahmedabad ITAT	<ul style="list-style-type: none"> • Modification to client code of client is not necessarily a mala fide act • Disclosure made in a statement recorded at unearthly hours cannot be given credence • If a voluntary disclosure is retracted, the AO has to make addition on the basis of documentary evidence

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2015-ITRV-SC-206	DGIT vs. Spacewood Furnishers Pvt. Ltd	Supreme Court	While the revenue has to record reasons to show that “satisfaction” for the search u/s 132 was proper and the same is justiciable, the assessee is not entitled (till the start of the assessment proceedings) to inspect the documents or the reasons as it would be counter-productive and confer an unfair advantage on the assessee
2015-ITRV-HC-BOM-208	CIT vs. Continental Warehousing Corporation	Bombay High Court	No addition can be made u/s 153A in respect of an unabated assessment which has become final if no incriminating material is found during the search.
2015-ITRV-ITAT-DEL-220	Computer Engineering Services India (P) Ltd vs. ACIT	Delhi ITAT	S. 143(2) and 153C notices issued in the name of the non-existent amalgamated company are void and render the assessment order null and void
2015-ITRV-HC-CAL-224	Navin Kumar Agarwal vs. CIT	Calcutta High Court	The search ends, and the period of limitation begins u/s 158BE, only on the drawing up of the formal panchnama to record the ending of the search. The argument that the search is concluded on the date of the search itself if nothing is seized thereafter is not acceptable
2015-ITRV-ITAT-JPR-225	Shri Basant Bansal vs. ACIT	Jaipur ITAT	Addition made u/s 143(3) / 153A solely on the basis of a disclosure and without any incriminating material is not sustainable if facts show that disclosure was under duress. CBDT Instruction dated 10.03.2003 relied upon
2015-ITRV-ITAT-MUM-234	Sumanlata Bansal vs. ACIT	Mumbai ITAT (Third Member)	There is no requirement to issue a notice u/s 143(2) before making an assessment u/s 153A
2015-ITRV-ITAT-KOL-244	SPS Steel & Power Ltd vs. ACIT	Kolkata ITAT	Explained the law on what is “undisclosed income” and levy of penalty u/s 271AAA on the basis of a “dumb” document and surrender by the assessee
2015-ITRV-HC-MP-254	CIT vs. M/s Mechmen	Madhya Pradesh High Court	Even if the AO of the searched person and of the "other person" (i.e. the assessee) is the same, the proper satisfaction has to be recorded before assuming jurisdiction over the assessee u/s 153C. Failure to record satisfaction renders the assessment order null and void
2015-ITRV-ITAT-MUM-	Ketan V. Shah vs. ACIT	Mumbai ITAT	S. 132(4A) presumption does not apply to loose papers found in some other person's

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267			possession. While the AO can make a protective assessment, the appellate authority cannot confirm a protective order. It has to either make it substantive or quash it
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SERVICE / ISSUE OF NOTICE

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-ITAT-JPR-240	ITO vs. Shubhashri Panicker	Jaipur ITAT	The postal authorities are the agent of the recipient. There is a presumption that handing over notice to the postal department means that it has been served on the assessee u/s 282
2015-ITRV-ITAT-DEL-256	ITO vs. Late Som Nath Malhotra	Delhi ITAT	Issue of notice u/s 148 in the name of the deceased person renders the assessment order null and void even if the order is passed in the name of the legal heir. The fact that the legal heir attended the proceedings does not make it a curable defect u/s 292BB
2015-ITRV-ITAT-MUM-270	Color Craft vs. ITO	Mumbai ITAT	Explained the law on validity of service of notices u/s 282B by "Speed Post" instead of "Registered Post A/D" explained

SHARE TRANSACTIONS / DERIVATIVES / SPECULATION

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-ITAT-MUM-132	IVF Advisors Private Limited vs. ACIT	Mumbai ITAT	Transaction of call/put options in foreign currency are "derivatives" and loss suffered therein is not a "speculation" loss u/s 43 (5)
2015-ITRV-ITAT-HC-219	ITO vs. Emperor International Ltd	Delhi ITAT	Loss from trading in derivatives is not a speculation loss u/s 43(5)(d) and can be set-off against normal business profits

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SET-OFF OF LOSSES

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-ITAT-MUM-233	Raptakos Brett & Co. Ltd vs. DCIT	Mumbai ITAT	Though the LTCG on sale of equity shares (subject to STT) is exempt from tax u/s 10(38), the long-term capital loss on sale of such shares can be set-off against the taxable LTCG on sale of another asset u/s 70(3)

TAX DEDUCTED AT SOURCE / SECTION 40(a)(ia) / 206AA / 234E

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2015-ITRV-HC-DEL-005	UCO Bank vs. UOI	Delhi High Court	Liability for TDS u/s 194A does not arise if the beneficiary is not ascertainable and the person in whose name the interest is credited is not person liable to pay tax. Circular No. 08/ 2011 dated 14.10.2011 set aside
2015-ITRV-ITAT-BANG-021	Bruhat Bangalore Mahanagar Palike vs. ITO	Bangalore ITAT	The term "any sum" in s. 194LA TDS does not cover a case where there is no monetary consideration but Development Right's Certificate (DRC) are issued
2015-ITRV-ITAT-MUM-043	ACIT vs. Vilas N. Tamhankar	Mumbai ITAT	Impact of Explanation 2 to s. 195(1) inserted by Finance Act, 2012 w.r.e.f. 01.04.1962 on law laid down in GE India Technology Centre 327 ITR 456 (SC)
2015-ITRV-ITAT-CHN-044	The Ramanthali Service Co-operative Bank Ltd vs. ITO	Cochin ITAT	S. 40(a)(ia) second proviso is not retrospective & so payment of TDS before due date of ROI does not prevent disallowance. Law laid down in Vector Shipping cannot be followed
2015-ITRV-HC-DEL-046	CIT vs. Delhi Race Club	Delhi High Court	Broadcast or live coverage does not have a "copyright" & is consequently not assessable as "royalty" u/s 9(1)(vi) for purposes of TDS
2015-ITRV-ITAT-MUM-068	ACIT vs. Oil and Natural Gas Corporation Ltd	Mumbai ITAT	Lease premium and additional Floor Space Index (FSI) charges paid to MMRDA is not "rent" for TDS u/s 194-I
2015-ITRV-HC-AP-073	CIT vs. Janapriya Engineers Syndicate	High Court of Telangana	Despite stay by High Court, Special Bench verdict In Meryl Shipping for s. 40(a)(ia) is binding on the ITAT due to judicial

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		and Andhra Pradesh	discipline
2015-ITRV-ITAT-MUM-074	Arcadia Share & Stock Brokers Pvt. Ltd vs. DCIT	Mumbai ITAT	Merilyn Shipping 146 TTJ 1 (Vizag) has binding effect in view of the SLP dismissal & the clarification in Janapriya Engineers (AP HC) and so amounts already paid during the year cannot be disallowed u/s 40(a)(ia)
2015-ITRV-ITAT-PUNE-078	Gera Developments Pvt. Ltd vs. JCIT	Pune ITAT	S. 40(a)(ia) disallowance cannot be made if the assessee has not claimed a deduction.
2015-ITRV-ITAT-PAN-089	ACIT vs. Indian Furniture Products Limited	Panaji ITAT	Usance charges paid by the assessee on import of raw material from foreign countries attracts tax in India u/s 5(2)(b) r.w.s. 9(1)(v)(b) and tax is deductible u/s 195(1), non-deduction would result in disallowance u/s 40(a)(i)
2015-ITRV-HC-MUM-114	Rashmikant Kundalia vs. UOI	Mumbai High Court	Holding the constitutionally valid the levy of fee u/s 234E has held that the late filing of TDS returns by the deductor causes inconvenience to everyone and s. 234E levies a fee to regularize the said late filing. The fee is not in the guise of a tax nor is it onerous
2015-ITRV-HC-DEL-122	DIT vs. GE Packaged Power Inc	Delhi High Court	View in Alcatel Lucent that assessee must pay interest for short-fall of advance-tax u/s 234B if it induced payee not to deduct TDS cannot be followed. View in Jacobs that has to be followed because obligation of payer to deduct TDS is absolute & not dependent on assertion of payee. Impact of Proviso to s. 209(1) inserted by FA 2012 w.e.f. 1.4.2012 considered
2015-ITRV-ITAT-MUM-148	IDBI Capital Market Services Ltd vs. DCIT	Mumbai ITAT	Benefit against s. 40(a)(ia) disallowance conferred in Kotak Securities 340 ITR 333 (Bom) has to be extended to cases where ROI was filed pre-delivery of the verdict.
2015-ITRV-ITAT-PNJ-158	ACIT vs. Ajit Ramakant Phatarpekar	Panaji ITAT	If an amount becomes taxable due to a retrospective amendment, payments prior to the amendment cannot be disallowed u/s 40(a)(ia) for want of TDS
2015-ITRV-ITAT-PUNE-159	ACIT vs. Bhavook Chandraprakash Tripathi	Pune ITAT	Merilyn Shipping 136 ITD 23 (SB) cannot be followed but question whether the second proviso to s. 40(a)(ia) is retrospective or not requires to be considered by the AO
2015-ITRV-	DDIT vs. Serum	Pune ITAT	Even in the absence of PAN payer not

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ITAT-PUNE-168	Institute of India Limited		required to deduct TDS at 20% u/s 206AA if case covered by DTAA
2015-ITRV-ITAT-MUM-181	Jitendra Mansukhlal Shah vs. DCIT	Mumbai ITAT	Merilyn Shipping 136 ITD 23 (SB) should be followed in view of approval by Allahabad HC and dismissal of SLP by Supreme Court. In any event as two views are possible, view in favour of assessee should be followed. Amounts already paid without TDS cannot be disallowed u/s 40(a)(ia)
2015-ITRV-HC-BOM-209	CIT (TDS) vs. Maharashtra State Electricity Distribution Co Ltd	Bombay High Court	Explaining meaning of expression "rent" u/s 194-I and "fees for technical services" u/s 194-J in the context of transmission & wheeling charges paid by electricity company held that transmission charges and / or wheeling charges is neither rent nor FTS
2015-ITRV-ITAT-KOL-212	Ballabh Das Agarwal vs. ITO	Kolkata ITAT	<ul style="list-style-type: none"> S. 40(a)(ia) second proviso was inserted by FA 2012 to rectify the unintended consequence of disallowance in the hands of the payer even if the payee has paid tax. It is curative and retrospective in operation. Assessee's claim of having obtained declarations u/s 197A from the payees should not be disbelieved without evidence. Assessee is not expected to go into the correctness of the declarations filed by the payees
2015-ITRV-ITAT-DEL-213	Aspect Software Inc vs. ADIT	Delhi ITAT	Consideration for supply of software (whether with or without equipment) is not taxable as "royalty" if there is no transfer of right in the copyright to the software
2015-ITRV-ITAT-AMT-230	Sibia Healthcare Private Limited vs. DCIT	Amritsar ITAT	Prior to the amendment to s. 200A w.e.f. 01.06.2015, the fee for default in filing TDS statements u/s 234E cannot be recovered from the assessee-deductor
2015-ITRV-ITAT-AMT-232	Jalandhar Improvement Trust vs. ITO	Amritsar ITAT	Only payments "in pursuance of a contract" are subject to TDS u/s 194C. Payments made under a legal obligation are not covered
2015-ITRV-HC-P&H-236	P.M.S Diesels vs. CIT	Punjab & Haryana High Court	Argument that the disallowance for want of TDS can be made only for amounts "payable" as of 31st March u/s 40(a)(ia) and not for those already "paid" is not correct. In Limine dismissal of SLP in Vector Shipping

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			does not mean Supreme Court has confirmed the view of the HC. However, ITAT to consider whether payees have already paid tax
2015-ITRV-ITAT-AHD-252	Shri Umeya Corporation vs. ITO	Ahmedabad ITAT	The amendment u/s 40(a)(ia) is clarificatory and retrospective w.e.f. 01.04.2005
2015-ITRV-ITAT-CHN-259	G. Indhirani vs. DCIT	Chennai ITAT	Prior to the amendment to s. 200A w.e.f. 01.06.2015, the fee for default in filing TDS statements u/s 234E cannot be recovered from the assessee-deductor while processing the s. 200A statement. However, the AO is entitled to pass a separate order u/s 234E to levy the fee within the limitation period
2015-ITRV-HC-DEL-261	CIT vs. DLF Commercial Project Corp	Delhi High Court	The obligation to deduct TDS is only with respect to "income". As amounts paid as "reimbursement of expenses" do not have the character of income, there is no obligation to deduct TDS, hence there could not be any disallowance u/s 40(a)(ia)
2015-ITRV-ITAT-CHN-272	Dishnet Wireless Limited vs. DCIT	Chennai ITAT	<ul style="list-style-type: none"> • There is no obligation to deduct TDS at stage of making provision for expenditure u/s 194C if payee cannot be identified. • There is no obligation to deduct TDS u/s 194J if services (roaming charges) are rendered without human intervention and are not "technical services"
2015-ITRV-HC-BOM-274	Reliance Industries Ltd vs. CIT	Bombay High Court	<ul style="list-style-type: none"> • Penalty for failure to pay TDS in time u/s 221 can be levied even if the assessee voluntarily pays the TDS. • Financial hardship, diverse locations and lack of computerization are not good excuses. • The fact that CIT(A) decided in favour of the assessee & deleted the penalty does not necessarily mean that two views are possible
2015-ITRV-SC-278	Japan Airlines Co. Ltd vs. CIT	Supreme Court	In deciding whether a payment is for "use of land", the substance of the transaction has to be seen. If the payment is for a variety of services and the use of land is minor, the payment cannot be treated as "rent" u/s 194-I

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2015-ITRV- HC-KER-279	CIT vs. PVS Memorial Hospital Ltd	Kerala High Court	Deduction u/s 194C instead of u/s 194J renders the shortfall liable for disallowance u/s 40(a)(ia)
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