

INCOME TAX APPELLATE TRIBUNAL ORDER

[2009-TIOL-695-ITAT-DEL-SB](#)

ACIT, New Delhi Vs Sushila Milk Specialities Pvt Ltd (Dated: October 30, 2009)

Income Tax – Special Audit – Principles of Natural Justice essential, but only from date of Supreme Court order in Sahara India - [2008-TIOL-73-SC-IT-LB](#) – Not applicable to cases prior to 11 04 2008

[Also see analysis of the Order](#)

[2009-TIOL-694-ITAT-MAD](#)

M/s Sri Lakshmi Finance Vs THE DCIT, Salem (I) Ltd (Dated: May 27, 2009)

Income Tax - Section 158B(b), 158BB (1) - Assessee-firms are of one Group - derive income from finance business, and operate from the same business premises - search conducted at the business premises of the assessee and its sister concerns - In the assessment order passed by the AO u/s 158BC(c), undisclosed income assessed - CIT (A) upholds the AO's action - Held, the provisions of clause (b) of section 158B and sub-section (1) of section 158BB are squarely applicable to this case. The transaction that was taking place at the time of search, and was detected by the authorized officers, represented the *modus operandi* of suppressing income which had not been offered by the assessee-firms for tax. And the statements recorded during the search, represented the evidence on the basis of which the '*undisclosed income*' was computed. This evidence brought out the falsity of the entries made by the assessee-firms in their regular books of account, to hide the taxable income. CIT(A) order upheld. Appeal of the assessee-firms dismissed.

[2009-TIOL-693-ITAT-MUM](#)

ACIT, Mumbai Vs M/s United Motors (I) Ltd (Dated: June 6, 2009)

Income tax – Consideration for allowing use of premises – Capital receipt: the disputed receipt is compensation for dispossession of use of the premises by the assessee for a fairly longer period and by no means can it be compared with the recompense for giving up the source of income as by shifting the business premises of automobiles business, the assessee has not given up the very source of income. The surrender of possession, occupation and enjoyment of the premises by the assessee in the instant case for a premium of Rs. 50.00 lacs, in favour of M/s Trent Ltd. for a fairly long period, would amount to the extinguishment of the assessee's right in the capital asset. Under such circumstances there is a transfer within the definition of section 2(47)(ii) of a capital asset, being the right in the property u/s 2(14) and hence capital gain is required to be computed u/s 45.

[Also see analysis of the Order](#)

2009-TIOL-692-ITAT -MUM-LB
M/s B T Patil & Sons Belgaum Construction Pvt Ltd Vs ACIT, Kolhapur (Dated: October 26, 2009)
Tribunal has to decide an issue on the basis of the law as it stands on the day of the passing of the order: Tribunal is not empowered but duty bound to apply such retrospective amendment made to the relevant section after allowing chance to the aggrieved party to address on such retrospective amendment concerning the dispute in question.
Also see analysis of the Order
2009-TIOL-691-ITAT -DEL-SB
M/s Kailash Nath & Associates Vs ITO, New Delhi (Dated: October 16, 2009)
Assessee returns an income of Rs. 300 – AO adds Rs. 2.85 Crores; On appeal, tribunal finds that addition should have been 9.5 Crores; Assessee makes a quick retreat and concedes. To protect at least part of the Revenue, AO's order upheld: The assessee has clear surplus of over Rs.9.50 crores . The assessing officer has not even examined the tax implications of these issues but confined himself as to the taxability in respect of Rs.2.85 crores as part of revenue receipt. The assessing officer could have brought all sums to tax. Even on the reasoning that the amounts became accrued as a result of project completion method itself. Tribunal cannot go into this issue because it was not the case of the assessing officer. The assessee is fairly conscious of these implications and has wisely conceded the appeal in favour of the revenue . Without going to the merits of the matter, the order of the Assessing Officer confirmed. This exercise is just to protect the interest of the revenue to the extent the assessing officer has made the computation of income, as the Tribunal has no power to make enhancement.
Also see analysis of the Order
2009-TIOL-690-ITAT -DEL
Coca Cola India Inc Vs DCIT, Gurgaon (Dated: October 9, 2009)
Income tax - The assessee is engaged in the business of manufacturing and selling aerated waters - exclusively responsible for marketing strategies, advertisement, publicity and sales promotion even for its bottlers and distributors - collects service charges and reimbursement of actual costs incurred from service recipients - offers the service charges to tax as income - AO takes the view that 5% of the total expenditures incurred by service recipient should be the mark-up for the assessee which does all the planning and undertakes all promotional activities and also operates their accounts - CIT(A) agrees - held, a similar issue was discussed by the Tribunal for earlier AYs in the case of assessee itself. Complying with judicial discipline, the case is remanded to the AO for fresh examination

[2009-TIOL-689-ITAT-DEL](#)

Trent Brand Ltd Vs ITO, New Delhi (Dated: May 8, 2009)

Capital gain is leviable on the transfer of trademarks and designs – The assessee having assigned the trademarks and designs to Hindustan Lever Ltd., for a consideration of Rs. 110.05 crores, the same is a transfer of a capital asset and in view of the provisions of section 2(42A) Explanation (b), the capital asset which became the property of the assessee under the transfer which has been referred to in clause (iv) to section 47 and such other clauses, the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the asset acquired it and increase by the cost of any improvement to the asset incurred and borne by the previous owner or the assessee as the case may be

Stamp duty of Rs. 1.10 crores, not 'incurred' by the assessee and therefore not an allowable deduction . . In regard to the issue of disallowances of stamp duty of Rs. 1.10 crores it is noticed that the provisions of section 48(1) clearly says that the expenditure incurred wholly and exclusively in connection with such transfer, can be deducted. Here, the word is "incurred". The assessee has not incurred the said expenditure and even as on date, the said expenditure has not been incurred. Consequently, the same is not an allowable deduction.

[Also see analysis of the Order](#)

[2009-TIOL-688-ITAT-DEL](#)

Transocean Offshore International Venturst Ltd Vs DDIT, Dehradun (Dated: August 13, 2009)

Income tax - Sec 10(10CC) - Employer pays tax on behalf of employees - whether tax borne by the employer companies on the perquisites would be subject to multiple grossing up or whether the same would be exempt under section 10(10CC) of the Act.

The employer acts as an agent of 79 employees who claim exemption for tax paid by the employer - AO holds the tax paid by the employer is to be included in the income of the assessee on multiple stage grossing up - Assessee claims it is not a perquisite provided by way of monetary payment - CIT(A) decides to ignore the Special Bench decision in the case of RBF RIG Corporation, decided in favour of the assessee and observes that the intention of legislature in introducing section 10(10CC) was in respect of those perquisites which required valuation and not in respect of a tax perquisite which itself is describable in terms of rupees only. Section 10(10CC) have been introduced for the perquisites which need to be valued according to the basis of valuation prescribed in rule (3) and not a tax perquisite which does not need valuation.

The counsel for the assessee submits that the action of the CIT(A) in disregarding the decision of the Special Bench of the Tribunal amounts to cross violation of the principles of judicial hierarchy that exists in tax proceedings. Such action of the CIT(A) has caused undue hardship to the assessee of depositing the appeal fees and again agitating the matter before the Tribunal which may be compensated by way of awarding cost in favour of the assessee and the cost may be awarded by way refund

of fees of the assessee.

Held, it is true that in this case, had the CIT(A) followed the order of the Special Bench of the Tribunal, the unnecessary and unwarranted appeal by the assessee could have been avoided and in that case, department could have filed appeal before the Tribunal provided the department was not inclined to accept the decision of the CIT(A) which is based on the decision of higher judicial authority. However, there is no material to say that the CIT(A) has disregarded the order of the Special Bench of the Tribunal with a view to harass the assessee and to cause any monetary or other loss to the assessee in filing further appeal before the Tribunal. Assessee's appeal allowed

[2009-TIOL-687-ITAT-MUM](#)

M/s Royal Palms (India) Ltd Vs ACIT, Mumbai (Dated: August 13, 2009)

Income Tax - Sec 158BD - Assessee is engaged in the business of Real Estate Developments, Hotels, Golf Course, Developing and marketing of commercial & residential properties - on the basis of information received from the DCIT, notice u/s 158BD served on the assessee - The total undisclosed income determined - Assessee contends before the CIT(A) that the initiation of proceedings u/s. 158BD is not legal as the same is initiated without recording requisite satisfaction as required under law - CIT(A) dismisses the assessee Appeal - Held, since the satisfaction has not been recorded in accordance with law, the proceedings are bad in law and, accordingly, the assessment is annulled. Assessee's appeal allowed.

[2009-TIOL-686-ITAT-DEL](#)

M/s Escorts Heart Institute & Research Centre Ltd Vs ACIT, New Delhi (Dated: October 9, 2009)

Income tax - Sec 37(1) - Assessee is a hospital - pays heavy premium for keyman insurance policies taken in the name of a super specialist doctor, the MD and the CMD - claims deduction - AO holds since the benefits were given to individuals, and the expenses were incurred by the assessee not for wholly and exclusively for the purpose of business and the fact that no prerequisites were shown in the hands of the beneficiaries, it is not allowable deduction - CIT(A) grants part relief - held, merely because the assessee is a specialised hospital, only doctors can run the show successfully. What is also required to run the business successfully is business acumen which come from the top functionaries of the organisation. Profit in any business is a time-tested guiding factor and any dip in it clearly shows its relationship with the persons insured by the assessee - the premium paid for their insurance policies cannot be disallowed - Assessee's appeal allowed

[2009-TIOL-685-ITAT-MUM](#)

M/s Indus Engineering CO Vs ITO, Mumbai (Dated: April 23, 2009)

Income Tax - AO makes additions on the ground that Appellant has created a trading firm as device to inflate purchase and reduce incidence of taxation - levies penalty

u/s 271(1)(c) - CIT(A) confirms levy of penalty - Held, as long as the sale price by Trading firm is not established as being more than the market rate and as long as Trading firm has been assessed independently and their claim for expenditure has been accepted and such transactions have been going on for several years and no penalty levied in the earlier years, the explanation of the assessee that they had entered into this transaction under the bonafide belief that this was a genuine transaction and all the facts and profits of both the concerns have been fully disclosed to the IT Department has to be accepted. In view of the ratio of the decision of Mumbai Tribunal in the case of VIP Industries case, no penalty can be levied. Assessee's appeal allowed.

[2009-TIOL-684-ITAT-BANG](#)

ITO, Bangalore Vs Shri K Venkataswamy (Dated: June 5, 2009)

Income Tax - Assessee is a small time contractor - declares certain amount as income from house property and the same is utilised for setting off interest on loan taken for the property - AO treats the same as income from other sources - CIT(A) sets aside AO's order and allows the interest paid on the loan used for construction as payment for capital borrowed against said sum - held, issue remanded for fresh examination of facts

[2009-TIOL-683-ITAT-BANG](#)

Sri T V Venkatarathna Vs ACIT, Mysore (Dated: June 5, 2009)

Income Tax - Assessee claims exemption u/s 54F on account of investment made in the house - housing loan - capital gain arising out of sale of certain units - Assessee used certain amount from salary account for construction of house - AO holds that the Assessee has not utilized the capital gain for purpose or construction of new asset - hence claim for deduction rejected - claim for certain expenses for consultation services u/s 57(iii) was also disallowed - CIT(A) upholds the order passed by AO - Tribunal observes that utilization of the same funds is not necessary - the cost of construction of the house is more than the loan taken - hence deduction u/s 54F is allowed - claim u/s 57(iii) is disallowed as the same are the part his employment - Appeal partly allowed.

[2009-TIOL-682-ITAT-MUM](#)

M/s Preroy A G Vs DDIT, Mumbai (Dated: October 6, 2009)

Income tax - Sec 9 - DTAA - Assessee files miscellaneous application for rectification of mistake on the ground that the Tribunal has erroneously remanded the issue to the AO for examining taxability whereas the same is already done by the AO - held, appeal allowed as there is error apparent in the order which is to be rectified - order recalled for fresh hearing - Assessee's appeal allowed

[2009-TIOL-681-ITAT-MUM](#)

ACIT, Mumbai Vs M/s Hindalco Industries Ltd (Dated: August 4, 2009)

Income Tax - AO makes addition – CIT(A) gives partial relief to the assessee – Deduction u/s 80HHC - Appeal on the issue of CIT(A) directing the AO to exclude the amount of sales tax and excise duty from the total turnover for the purpose of computation of deduction u/s 80HHC - Held, issue covered in favour of assessee by the decision of Apex Court in CIT vs. Lakshmi Machine Works

Deduction u/s. 80-IA On the issue of CIT(A) holding that power unit and Co-Generation Plant are eligible for deduction u/s. 80-IA-Held, in view of the Tribunal decision in assessee own case the issue decided in favour of the Assessee.

On the issue of CIT(A) directing the AO to allow the assessee's claim for exemption of interest received u/s 10(23G) on a gross basis –Held, in view of the Tribunal decision in assessee own case, CIT(A) order upheld - Revenue's Ground dismissed.

[2009-TIOL-680-ITAT-MUM](#)

ITO, Mumbai Vs Mr Mukesh Bhanubhai Shah (Dated: February 26, 2009)

Income Tax - Assessee is a yarn dealer - files Return - Scrutiny u/s 143(3) - certain additions u/s 68 made by AO on account of gifts received - AO observes that gifts are not received out of love and affection – held, creditworthiness of donar and genuineness of the gifts were not established - CIT(A) accepts the identity and genuineness of gifts and holds that gifts can be received from foreigners and strangers - held, the assessee fails to establish the genuineness of gifts and identity of donars and hence fails to discharge the onus u/s 68 – Revenue's appeal allowed.

[2009-TIOL-679-ITAT-MUM](#)

M/s Hotel Atithi Vs ITO (Dated: January 27, 2009)

Income Tax - Section 145 - Assessee engaged in the business of running a bar and restaurant - A survey u/s 133A conducted at assessee's business premises - Assessee declares G P rate in respect of food stuff at 52%, and that in respect of liquor and beer at 50.9% - AO on the basis of duty chart and in the absence of account, estimates GP rate in respect of food sales @ 66.66%; in respect of beers @ 66.66, and in respect of liquor at 75% and makes addition - CIT(A) partly allows the assessee's Appeal - Held, under the provisions of section 145, in case the AO is not satisfied about the correctness or completeness of the accounts of the assessee or where the method of accounting has not been regularly followed by the assessee, the AO can reject the books of accounts and determine the profit to the best of his judgment - In the absence of day to day stock register no cross-check can be exercised on the actual value of closing stock and the profit can be easily manipulated by manipulating the value of closing stock from year to year. In view of statement of partners about suppression of profit, books of accounts of the assessee cannot be said to be correct and complete from which true profit can be determined - CIT(A) order confirmed.

On the issue of addition on account of suppression of sale of liquor in restaurant -

Held, it would be appropriate to estimate the combined GP rate at 60% after making all allowances and sales have to be determined on the basis of cost of goods sold as declared in the books in the same manner as done by the AO and thereafter GP rate would be computed @ 60% on the enhanced sales and the excess of GP so calculated with respect to the GP recorded in the books will be added to the profit.

Appeal of assessee dismissed and that of Revenue Partly allowed.

[2009-TIOL-678-ITAT-MUM](#)

M/s Precision Fastners Ltd Vs ACIT, Mumbai (Dated: March 24, 2009)

Income Tax - Sec 147 - Assessee buys plant and machinery eligible for 100% depreciation and leases them out on discounted rental - AO treats the same as colourable device to evade tax - makes addition in block assessment - Tribunal confirms the addition except for depreciation on one asset - Tribunal directs AO "to reduce from computation of undisclosed income lease rentals in so far as they did not represent any independent income of the assessee - AO gives effect to the Tribunal order and re-determines the undisclosed income - Thereafter, such order rectified and later on assessee's appeal against such rectification before the CIT(A), the undisclosed income finally fixed - block assessment re-opened - Held, the re-opening itself is bad in law - the consequent re-assessment becomes void. Assessee's appeal allowed.

[2009-TIOL-677-ITAT-MUM](#)

CIBA India Pvt Ltd Vs ITO, Mumbai (Dated: March 13, 2009)

Income Tax - deduction u/s 35(1)(iv) - Assessee is engaged in the business of scientific research - makes investment in joint venture - claims deduction u/s. 35(1)(iv) - AO denies the deduction by holding that deduction under the provisions is allowable only in respect of the capital expenditure on scientific research related to the business of the assessee - CIT(A) holds that the scientific research related to the business of the group concerns is different from the scientific research related to the business of the assessee and denies assessee's claim - Held, the assessee does not have the business activity to absorb the developed scientific research, by conducting the said research, the assessee generates a marketable product or stock in trade in the form of the scientific research. The provisions of section 35(1)(iv) have no application to the assessee's case. Assessee's appeal dismissed.

[2009-TIOL-676-ITAT-MAD](#)

ITO, Chennai Vs M/s Shriram Chits & Inv Pvt Ltd (Dated: February 18, 2009)

Income Tax - penalty u/s 271(1)(c)- Assessee is engaged in the business of conducting chits. AO makes addition towards foreman commission and extra foreman commission of 1% collected by the assessee. Additions finally sustained by this Tribunal. AO imposes penalty – CIT(A) deletes it – Held, the explanations are bonafide explanations of the assessee for adopting a particular practice of accounting and treating a particular receipt in a particular manner. There could be two views on an

issue and it cannot be said that the assessee has failed to make full disclosure of all the facts. Assessee's case does not fall under the provisions of section 271(1)(c) or Explanation (1) to the said section. CIT(A) order upheld. Revenue's appeal dismissed.

[2009-TIOL-675-ITAT-BANG](#)

I -Gate Global Solutions Ltd Vs DCIT, Bangalore (Dated: July 10, 2009)

Income Tax - Sec 263 - AO makes various disallowances - Appeal filed before CIT(A) - CIT invokes jurisdiction u/s 263 on the issue that AO has not assessed the miscellaneous income which has been reduced by the assessee from the net profit as per the profit and loss account and also wrongly reduced communication expenses from the export turnover while computing the deduction allowable u/s 10A - Held, CIT has not been able to establish errors that are prejudicial to the interest of revenue. The prejudice, if any, stands answered by several judicial decisions in favour of the assessee - Assessee's appeal allowed

[2009-TIOL-674-ITAT-BANG](#)

Shri N Gowrishankar Vs DCIT, Bangalore (Dated: May 8, 2009)

Income Tax - Assessee receives payment for consulting services from domestic company - makes part payment to non-resident for rendering input service - AO disallows deduction for lack of papers authenticating the transaction - CIT(A) agrees with the AO - Held, the claim of expenditure on account of consultancy services availed from the non-resident company has no relevance to consultancy services provided by the assessee to Indian Company - Assessee's appeal dismissed.

[2009-TIOL-673-ITAT-BANG](#)

M/s Salarpuria Properties Pvt Ltd Vs DCIT, Bangalore (Dated: May 28, 2009)

Income Tax - Sections 154, 201(1) and 201(1A) - Assessee is a private limited company - Survey u/s 133A conducted at its premises - Subsequently, Revenue passes an order u/s 201(1) and 201(1A), holding the assessee company to be in default for non-deduction of tax u/s 194 in respect to deemed dividend concerning transaction with sister concern - demand raised - CIT(A) allows appeal of the assessee by holding that the AO has no jurisdiction over the case and the proceedings u/s 201(1) and 201(1A) are barred by limitation - Revenue goes in appeal before the Tribunal - As the matter stood, revenue files rectification application u/s 154 before CIT(A) stating, certain mistakes apparent from record have crept in the order of CIT(A) which is the subject matter of appeal before the Tribunal - Meanwhile, the Tribunal disposes off the appeal by affirming the view of the CIT(A) holding the issue in favour of the assessee - Tribunal, while disposing of the revenue's appeal, also takes note of the rectification application pending before the CIT(A) - Subsequently, revenue's rectification application u/s 154 allowed by the CIT(A) and AO's order u/s 201(1) and 201(1A) restored - CIT(A) states that the appeal of the assessee against order u/s 201(1) and 201(1A) has been filed belatedly and no condonation petition filed by the assessee - Held, the issue on merits is in favour of the assessee by the

order of Tribunal. In regard to the issue of belatedly filing of appeal without filing petition for condoning delay, there is no material on record to arrive at a conclusion whether the appeal is filed on time or not - issue remanded to the file of the CIT(A) - Assessee's appeal allowed.

[2009-TIOL-672-ITAT-MUM](#)

M/s Tata Motors Ltd Vs JCIT, Mumbai (Dated: January 21, 2009)

Income Tax - deduction u/s 80HHC - Assessee requests for amendment of the Tribunal order in relation to the claim for deduction u/s 80HHC in respect of additional amount received by the assessee, due to the fluctuation in the exchange rate in respect of earlier year's export proceeds received in the year under consideration - Held, in view of the decision of the Tribunal in assessee's own cases the assessee is entitled for deduction u/s. 80HHC on the amount of exchange rate fluctuation gain received during the year under consideration which is pertaining to exports made in earlier years. Thus, Assessee stands allowed.

[2009-TIOL-671-ITAT-MUM](#)

M/s Castrol India Ltd Vs ACIT, Mumbai (Dated: July 30, 2009)

Income Tax - Assessee is engaged in the business of manufacture and distribution of lubricating oil and greases - AO makes various additions and disallowance - CIT(A) gives part relief - On the issue of allowability of software expenditure - Held, matter remanded to the file of AO for fresh adjudication in the view of decision of Special bench of the Tribunal in the case of Amway India Enterprises vs. DCIT.

Section 145A - On the issue of confirmation of addition on account of modvat credit to the closing stock - Held, a harmonious construction needs to be given while interpreting section 145A and the view of the Tribunal in the case of Mattel Toys (I) Pvt Ltd is the correct interpretation of the section. Issue set aside to the file of the AO for fresh adjudication.

Revenue Appeal on the issue of disallowance of advertisement expenditure - Held, following the co-ordinate bench decision revenue ground rejected.

Assessee's appeal partly allowed

[2009-TIOL-670-ITAT-MUM](#)

ITO, Mumbai Vs M/s Satish A Shah (HUF) (Dated: April 23, 2009)

Income tax - Sec 147 - Assessee is an HUF - sells diamond jewellery declared under VDIS Scheme, 1997 - Search conducted - CA's house also raided - papers relating to front firms found and bogus transactions detected - AO treats it as unexplained expenditure - CIT(A) disagrees with the AO - held, since the Revenue fails to substantiate that the sale transactions are fictitious, CIT(A) order upheld - Revenue's appeal dismissed

2009-TIOL-669-ITAT-BANG
M/s G E Medical Systems (India) Pvt Ltd Vs CIT, Bangalore (Dated: August 4, 2009)
Income tax - Sec 10A benefits - Assessee is a subsidiary of the US-based company - engaged in high quality software development and provides testing and support services - incurs foreign currency expenses on travel for providing software services - AO reduces such expenditure from export turnover - held, it is settled law now that if it is reduced from export turnover, the same is to be deducted from total turnover also for computing Sec 10A benefits - Assessee's appeal allowed
2009-TIOL-668-ITAT-BANG
ITO, Bangalore Vs M/s CGI Information Systems & Management (Dated: July 17, 2009)
Income tax – TDS – Held that No TDS is required to be deducted in respect of acquisition of software following the decision of M/s Samsung Electronics Ltd. (2005-TIOL-83-ITAT-BANG) - No TDS is required to be deducted in case of reimbursement of expenses following the decision of BIAL vs ITO, Bangalore (2008-TIOL-536-ITAT-BANG) .
2009-TIOL-667-ITAT-BANG
Shri Nagappa Nagaraj Vs ACIT, Bangalore (Dated: April 17, 2009)
Income Tax - exemption u/s 54B - AO considers sale of agriculture land by the assessee as "Adventure in the nature of trade" and considers it as business income on the finding that neither the assessee holds land for agriculture purposes nor purchases land for agriculture purpose and denies exemption u/s 54B - Held, claim partly allowed on the land purchased and utilised for agriculture purpose Assessee constructs convention hall - claims loss - AO denies on the ground that the loss also includes inauguration expenses which are in nature of capital expenditure - DVO files report - AO treats higher construction cost as unexplained investment – CIT(A) upholds AO's order - Held, AO to adopt PWD rates on the plinth area rate method, and inaugural expenses cannot be denied - Assessee's appeal partly allowed.
2009-TIOL-666-ITAT-BANG
M/s Bovis Lend Lease (India) Pvt Ltd Vs ITO, Bangalore (Dated: August 28, 2009)
Income tax - Sec 197 - India -Singapore DTAA - assessee enters into Management Services (MSA) Agreement with Singapore-based Group company - NOC u/s 197 issued - AO treats the payments as fees for technical services under Article 12 of

DTAA - whether payments are reimbursement of costs, not taxable in India - whether payments made for rendering services in relation to day to day business operations is liable to TDS u/s 195

[Also see analysis of the Order](#)

[2009-TIOL-665-ITAT-DEL](#)

M/s Ahmedabad Vadodara Express Co Ltd Vs ITO, New Delhi (Dated: August 31, 2009)

Income Tax - Assessee, a wholly owned subsidiary of NHAI, engaged in construction and maintenance of public highway which is divided in three phases - Assessee does not charge depreciation on Expressway as the notification for Toll Fee collection was not received from Government of India despite the fact that it was capitalized and was put to use and later it charged depreciation on the same - AO holds that commercial operations had not been started by the end of the relevant previous year and therefore no depreciation was allowable to the company - CIT(A) rejects assessee's claim - Held, what is relevant for claiming depreciation, is the date of set up of the assessee's business. In a manufacturing concern, the business could be said to be set up when the process of manufacture is ready to begin, when a substantial amount of raw material is purchased for being converted into a finished product and is possible that a business can be treated as set up even if there is a production of sub-standard and not easily saleable product - Held, in a project of this magnitude it is quite understandable that there could be small defects to which attention was drawn of the contractors and since defects are very minor in nature and do not in any way drag the date of setting up of business to the date of such rectification - Assessee's appeal allowed.

[2009-TIOL-664-ITAT-DEL](#)

ACIT, New Delhi Vs M/s Technofab Engg Ltd (Dated: July 30, 2009)

Income Tax - AO makes disallowance on the ground that expenses are not supported by proper vouchers and documentary evidence - CIT(A) is of the view that AO made the disallowance in a casual and cavalier manner without any basis - Held, assessee has produced vouchers and also filed all the details that were required, and the books of account were also regularly audited. Revenue's appeal dismissed.

CBDT Circular no. 14 dated 11-4-1955 - On the issue of direction of the CIT(A) to allow liability of interest although the same being not debited to the books of account and the said claim not made by filing a revised return - Held, it is well known principle that it is incumbent upon the AO to find out whether a particular income is assessable in a particular year and merely because the assessee wrongly includes the income in its income in a particular year, it does not confer any jurisdiction on the AO to tax the income in that year even though such income does not pertain to that year. In view of CBDT circular, CIT(A) order upheld. Revenue's appeal dismissed.

[2009-TIOL-663-ITAT-MUM](#)

DCIT, Mumbai Vs Allied Digital Services Pvt Ltd (Dated: August 26, 2009)

Income tax - Sec 36(1)(vii) - Assessee does trading in computer hardware, multimedia and network project - writes off certain amount as bad debts - AO disallows on the ground that the assessee fails to establish reasons for writing off sum due from big corporate clients - held, in view of Bombay HC decision in the case of Oman International Bank, once a sum is written off in the books of account, it is allowable - Revenue's appeal dismissed

[2009-TIOL-662-ITAT-MUM](#)

M/s Teksons Cooling Systems Pvt Ltd Vs ITO, Mumbai (Dated: March 24, 2009)

Income tax - Sec 80IA, 271(1)(c) - Assessee is a manufacturer of automobile radiators - claims deduction for interest income u/s 80IA - AO allows it - Notice u/s 148 - In reassessment proceedings AO disallows the claim and treats the interest income under the head 'income from other sources' - also initiates penalty proceedings - held, merely because of change of head of income it cannot be said that the assessee concealed income and such a change in head also does not affect the total income - since the assessee has relied on the CA's certificate to make the claim, it cannot be penalised for the ambiguity of law at the relevant time which became clear later that such deduction cannot be claimed - there is also no evidence that the CA's intention was mala fide in issuing such a certificate - penalty not sustainable

[2009-TIOL-661-ITAT-BANG](#)

M/s Wipro Ge Medical Systems Pvt Ltd Vs DCIT, Bangalore (Dated: July 10, 2009)

Income tax - Sec 10A - Assessee claims exemption - AO allows it - reassessment initiated and Sec 10A benefits disallowed on the ground that the STPI units were only expanded from the existing business and were not new units - CIT(A) disagrees with the AO that the benefits were eligible from April 1, 1993 and if Sec 10A benefits are disallowed, the assessee is eligible for Sec 80HHE benefits. Besides all the facts are available in the return and the AO has not brought to notice any new information - held, the reassessment beyond four years is time-barred and there is no infirmity in the CIT(A) order - Assessee's appeal allowed

[2009-TIOL-660-ITAT-AHM-TM](#)

Jitu Builders Pvt Ltd Vs ACIT, Surat (Dated: August 7, 2009)

Income tax - Penalty u/s 271D - Assessee is a real estate developer - negotiates a land deal - borrows cash fund to close the deal on beneficial terms - deal falls through - cash deposited in bank and an account payee cheque issued to the entity which lent the cash to the assessee - AO treats it as violation of Sec 269SS and does not find any merits in the assessee's explanation to be treated as reasonable cause u/s 273B - initiates penalty proceedings u/s 271D - CIT(A) agrees with the AO - Difference of opinion among Tribunal Members - referencē to Third Member who agrees with the

Judicial Member, finding enough merit in the assessee's explanation and treating the same as reasonable cause u/s 273B - Third Member holds that,

[Also see analysis of the Order](#)

[2009-TIOL-659-ITAT-DEL](#)

M/s Siel Ltd Vs ACIT, New Delhi (Dated: September 30, 2009)

Income Tax Act – Section 37(1) and Section 36(1)(iii) – Investments & Loans advanced to Subsidiaries – Held that no disallowance should be made when money had been advanced in earlier year and no addition was made in the earlier years on such advances on account of interest free advances in earlier years.

[2009-TIOL-658-ITAT-BANG](#)

ITO, Bangalore Vs M/s Gignext Solutions India Pvt Ltd (Dated: July 24, 2009)

Income Tax - Section 10A - Assessee is engaged in software development and services - claims deduction u/s 10A - AO denies on the ground that the assessee has violated the conditions laid down in section 10A(2)(i)(b), 10A(2)(ii) and 10A(2)(iii) - CIT(A) allows appeal - Held, in view of the judgment of the Punjab & Haryana High Court in the case of Mahavir Spinning Mills Ltd. and the order of the co-ordinate Bench of the Tribunal in the case of M/s. Foresee Information Systems (P) Ltd, deductions are available to the assessee - Revenue's Appeal dismissed.

[2009-TIOL-657-ITAT-MAD](#)

M/s TVS Motor Company Ltd Vs ITO, Chennai (Dated: September 18, 2009)

India-UK DTAA - Article 13(4)(c) - Assessee-company is a motorcycle manufacturer - enters into agreement with non-resident company for specialised testing of its own engines and that of its competitor - non-resident to provide documented test report - also provide training to its engineers in UK as it has no PE in India - whether payments made for such services are liable to TDS - are such services covered by the definition of technical services under Article 13(4)(c)

[Also see analysis of the Order](#)

[2009-TIOL-656-ITAT-BANG](#)

JCIT, Bangalore Vs M/s Karnataka Soaps & Detergents Ltd (Dated: June 30, 2009)

Income tax - Sec 43B - AO disallows sales tax, surcharge and entry tax not paid - unless these liabilities are discharged by the assessee, it is hit by the provisions of Sec 43B - held, since these liabilities were discharged under the sales tax deferred scheme, and the same is allowable as per the CBDT's circular, Revenue's appeal has no merit

[2009-TIOL-655-ITAT-HYD](#)

ACIT, Hyderabad Vs M/s Idea Cellular Ltd (Dated: February 26, 2009)

Income tax - Sec 194H - Assessee is a cellular service provider - offers both pre-paid and post-paid facilities to subscribers - enters into agreement with distributors for marketing and promotion of its services - offers discounts on bulk purchases of SIM cards - Survey u/s 133A - Revenue treats the margins offered on the MRP as 'commission or brokerage' liable to TDS u/s 194H - CIT(A) disagrees - held, since the assessee and the distributors enjoy principal to principal relationship, the margins offered to distributors cannot be brought under the ambit of Commission taxable u/s 194H - discounts allowed on transactions resulting in outright purchases cannot be treated as brokerage or commission. Since the transactions between the assessee and the distributors are not on principal and agent basis, it cannot be said that the assessee was defaulter attracting the provisions of sec.201 (1) and sec.201(1A) of the Act. No fault in the CIT(A) order - Revenue's appeal dismissed

[2009-TIOL-654-ITAT-BANG](#)

M/s Amco Power Systems Ltd Vs ITO, Bangalore (Dated: July 10, 2009)

Income tax - Sec 35AB - Assessee claims deduction - notice u/s 148 - assessee claims depreciation on technical knowhow in revised return and enhances its loss more than the deduction sum u/s 35AB - AO disallows depreciation on the ground that such a benefit on intangible asset was allowable only from AY 1999-2000 - held, assessee is entitled to deduction u/s 35AB if depreciation is not allowed, and Sec 148 notice is for advantage to the Revenue and cannot be used for the benefit of the assessee whose losses are enhanced in this case - Assessee's appeal allowed

[2009-TIOL-653-ITAT-BANG](#)

ITO, Bangalore Vs M/s Aditi Technologies Pvt Ltd (Dated: July 24, 2009)

Income Tax - Assessee company claims deduction u/s 10A - AO disallows the claim holding that the claim was made without setting off brought forward unabsorbed depreciation and business losses of earlier years against the profits of the eligible business - CIT(A) allows assessee's appeal - Held, subject to provisions of section 10A, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things is to be allowed from the total income of the assessee - Held, the amount, which is to be reduced from the total income, is to be ascertained as per the provisions of section 10A(4) and the deduction has to be computed in the same proportion to the profit of the undertaking as export turnover bears to the total turnover of the undertaking. It does not refer to the income of the undertaking - Held,

if for earlier years, the assessee has opted u/s 10A(8) that provisions of section 10A be not applied then the undertaking is non-STPI unit for those asst. years and loss of non-STPI unit cannot be set off against profit of an STPI undertaking - Revenue's appeal dismissed.

[2009-TIOL-652-ITAT-MUM](#)

Ms Farah Khan Vs ACIT, Mumbai (Dated: July 3, 2009)

Income tax - held, anything disclosed in the return of income prior to the date of search is a matter of regular assessment and outside the purview of block assessment. Transactions which are already disclosed in regular return filed prior to the search cannot be considered in block assessment.

[Also see analysis of the Order](#)

[2009-TIOL-651-ITAT-DEL](#)

Triton Holdings Ltd Vs DCIT, Dehradun (Dated: August 13, 2009)

Income tax - Sec 10(10CC) - Appellant is an employer - pays tax on behalf of its expat employees - AO treats it as perquisite provided by way of non-monetary benefits, and holds that the same is taxable as part of salary income of expat employees - on the contrary, employees claim exemption u/s 10(10CC) for the tax payment made by the employer - whether tax borne by the employer companies on the perquisites would be subject to multiple grossing up or whether the same would be exempt under section 10(10CC) of the Act

AO does not accept the appellat's contention and holds that the tax paid for and on behalf of the employee is a perquisite, which is to be added to the income of the assessee on multiple stage grossing up. Appellant goes in appeal and contends that the issue is already settled in favour of the employees by the Special Bench decision in the case of RBF RIG Corporation, LLC Vs. ACIT ([2007-TIOL-442-ITAT-DEL-SB](#)). CIT(A) decides not to follow the Special Bench decision by holding that the intention of the legislature in introducing Sec 10(10CC) was in respect of those perquisites which required valuation prescribed in rule (3) whereas the tax perquisite does not need such valuation. There is no nexus between section 17(2)(iv) and section 10(10CC) of the Act.

Aggrieved employer goes in appeal to the Tribunal which has held that,

++ Tax paid by the employer in respect of salary paid to the employees would constitute non-monetary perquisite, eligible for exemption u/s 10(10CC) of the Act.

++ If CIT(A) had followed the order of the Special Bench, unnecessary and unwarranted appeal by the assessee could have been avoided.

++ No costs to be awarded as CIT(A) had not disregarded the Special Bench in order to harass the assesseees and to cause any monetary loss.

[Also see analysis of the Order](#)

[2009-TIOL-650-ITAT-DEL](#)

Hindustan Coca Cola Beverages Pvt Ltd Vs DCIT, New Delhi (Dated: August 25, 2009)

Income tax - Sec 32(1)(ii) - Assessee is into the business of manufacturing and distribution of aerated and non-aerated beverages - claims depreciation on goodwill by treating it as intangible asset - AO makes inquiry - Assessee furnishes details of intangible assets like marketing and trading reputation, trading style and name, marketing and distribution territorial knowhow and information of territory - AO then allows the claim and passes the order - CIT invokes its revisionary powers and disallows the same on the ground that no depreciation is admissible on goodwill - held, goodwill is not specifically excluded from the intangible assets eligible for depreciation. Even if an asset is described as goodwill but it fits in the description of Section 32(1)(ii), depreciation is to be granted on the same. The true basis of depreciation allowance is the character of the asset and not its description. The invocation of powers u/s 263 is devoid of merits and thus not sustainable - Assessee's appeal allowed

[2009-TIOL-649-ITAT-MUM](#)

Smt Rajalakshmi Sriram Vs ITO, Mumbai (Dated: March 24, 2009)

Income Tax Act – VRS – Section 10(10C) and Relief u/s 89(1) - assessee took voluntary retirement from UTI Asset Management Co. P. Ltd. (UTI AMC) on 31.10.2003 under the Voluntary Separation Scheme - "A" (VSS-A) and relieved from the services of the company on 28.11.2003. She received an ex-gratia on her retirement under the above said VRS. Thereafter, she joined UTI Investor Services Ltd. (later named as UTI Technology Services Ltd (UTI TS) on contract from 08.12.2003. She discontinued her new assignment from August 2004 - AO noticed that the assessee has been reemployed by the UTI TS on contractual payment which she offered under the head business or profession accordingly he was of the opinion that the deduction under section 10(10C) is not allowable to the assessee. Further the A.O. also did not consider the claim of relief under section 89(1) on the amounts received by the assessee and the income received from UTI TS on contractual services rendered was also considered as salary income and accordingly brought to tax under the head 'Salary income' – Held,

(a) on facts and circumstances of the case it cannot be considered that assessee was reemployed in another company of the same management;

(b) It is difficult to lay down any one text to distinguish the relationship of master and servant from that of an employer and independent contractor. In many cases the test laid down is that in the case of master and servant, the master can order or require what is to be done and how it is to be done but in the case of an independent contractor an employer can only say what is to be done but not how it shall be done. The reemployment given to assessee even though on contract basis has to be considered in the light of the above. The income received by assessee can only be considered under the head 'Salary'.

(c) the assessee is entitled for deduction under section 89(1) in relation to ex-gratia

received by the assessee under the voluntary retirement scheme as held by the Hon'ble Bombay High Court in the case of CIT vs . Nagesh Devidas Kulkarni ([2007-TIOL-207-HC-MUM-IT](#)).

[2009-TIOL-648-ITAT -PUNE](#)

Piaggio Vehicle Pvt Ltd Vs DCIT, Pune (Dated: May 29, 2009)

Income tax - Sec 32(1)(ii) - Assessee claims depreciation on leasehold rights as intangible assets - AO allows but CIT invokes powers u/s 263 - held, merely because the AO has not discussed the legality of claim it does not mean that the AO has not applied his mind to the detailed submissions filed by the assessee and the fact that the similar depreciation was allowed in the previous AYs - CIT decision to invoke powers u/s 263 is nto sustainable - Assessee's appeal allowed

[2009-TIOL-647-ITAT -BANG](#)

M/s Mphasis Software & Services (India) P Ltd Vs CIT, Bangalore (Dated: July 10, 2009)

Income tax - Sec 10A - Assessee is into exports of software development services - reduces expenses incurred in foreign currency from exports turnover as well as total turnover - CIT invokes powers u/s 263 on the ground that the Revenue is in appeal before the High Court on this issue - held, issue is no longer res integra as it is settled in favour of the assessee - Assessee's appeal partly allowed

[2009-TIOL-646-ITAT -AHM-TM](#)

M/s Kanel Oil & Export Inds Ltd Vs JCIT, Ahmedabad (Dated: August 21, 2009)

Income Tax - the levy of interest is automatic and mandatory and has to be charged without reference to the assessee; Special bench order in *Ashima Syntex* ([2009-TIOL-36-ITAT- AHM -SB](#)) followed in preference to High Court decision in *Snowcem India* ([2009-TIOL-39-HC-MUM-IT](#)) . sub-section (4) of section 115JA specifically stipulates that all other provisions of the Act apply to an assessment made on book profit under that section; the decision of a Special Bench is binding on division benches of the Tribunal, otherwise the very purpose of constituting them will get frustrated and the decision can be disregarded or distinguished only if there is any contrary view expressed by the jurisdictional High Court or the Supreme Court. " if there were conflicting decisions of the High Courts, other than the jurisdictional High Court, the Benches of the Tribunal were free to adopt the view which to the Benches appear to be better and that in certain circumstances the **view which was favourable to the taxpayer should be adopted** " .

[Also see analysis of the Order](#)

[2009-TIOL-645-ITAT-MUM](#)

ACIT, Mumbai Vs M/s RPG Life Sciences Ltd (Dated: August 31, 2009)

Income tax - Sec 2(42C) - Assessee is in the business of manufacturing pharmaceutical and agrochemical products - sells its agrochemical division to a non-resident buyer - AO treats it as a slump sale and capital gains taxable u/s 50B - Assessee claims it has been an itemised sale - CIT(A) agrees with the AO - held, since the CIT(A) has examined the facts in details and found the schedules reflecting assets and liabilities valued in itemised format, it cannot be said that it is a slump sale - Revenue's appeal dismissed

[2009-TIOL-644-ITAT-MUM](#)

DCIT, Mumbai Vs M/s Reliance Petroleum Ltd (Dated: September 18, 2009)

Income tax - Sec 154, 244A - Revenue objects to CIT(A) admitting appeal for allowing interest u/s 244A when TDS deducted not deposited before April 1st - held, since tax effect of the case is less than the monetary limit fixed by the CBDT, the appeal is dismissed

[2009-TIOL-643-ITAT-MAD](#)

N Saroja Vs ACIT, Tiruchirapalli (Dated: March 13, 2009)

Income Tax - Search u/s 132(4) - Assessee are engaged in carrying on jewellery business - During the course of block assessment AO, on the basis of material collected during the course of search computed the undisclosed income and makes addition - CIT(A) partly allows assessee's appeal - Revenue contends that CIT(A) has failed to appreciate that total investment in the property as per seized slip - Assessee contends that CIT(A) erred in giving credence to the loose sheet - Held, the loose sheet found at the premises of the assessee at the time of search evidencing undisclosed payment to seller has been rightly taken as basis for computation of undisclosed income. Claim by the assessee that only some portion of the loose sheet entry are correct cannot be taken as cogently rebutting the material found in the form of loose sheet. It is more so when a part of the entries in loose sheet has also been reflected in assessee's books of accounts and assessee has no explanation as to how other matters written in the loose sheet are wrong or what was the reason for such "wrong" entries. Hence, the evidence found in the form of entries in loose sheet stand corroborated. CIT (A) order upheld.

On the issue of telescoping of deficit in explained cash towards the addition of undisclosed income - Held, the claim that there are actually deficit in cash balances which should be given credit towards on-money payment in this transaction is not proved. CIT(A) order granting benefit of telescoping towards the addition set aside. Assessee Appeal dismissed, Revenue Appeal Partly allowed.

[2009-TIOL-642-ITAT-DEL](#)

M/s Xebec Exports Vs ACIT, Moradabad (Dated: August 28, 2009)

Income tax - Sec 36(1)(iii) - Assessee is a partnership firm, engaged in exports - AO disallows bank interest payment on the ground that the assessee has advanced interest-free loan out of borrowed funds to some partners - CIT(A) agrees with the AO - held, since credit balance in capital account of all partners is more than the debit balance, no addition is called for

Foreign travel - AO makes 10% disallowance of total expenditure - held, since the assessee has failed to furnish details of the sum spent on the trip, disallowance is valid

[2009-TIOL-641-ITAT-DEL-SB](#)

New Skies Satellites Vs ADIT, New Delhi (Dated: October 16, 2009)

Income tax - Sec 9(1)(vi) - DTAA with Netherlands, Thailand - Assesseees are non-resident companies from the Netherlands, Thailand and Hong Kong, engaged in the business of providing satellite transponders to telecasting and telecom companies in the Asian region - Telecasting companies uplink and downlink TV programmes through the transponders - Telecom companies use transponders for data transmission - Is there any 'secret process' involved in this activity? - will the term 'secret' appearing in the phrase 'secret formula or process' in Explanation 2 to Section 9(1)(vi) and in the relevant article of the Treaties, qualify the word 'process' also? If so, whether the services rendered through secret process only will be covered within the meaning of royalty - Whether the payment received by the assesseees from their customers on account of use of their satellites for telecommunication and broadcasting, amounts to 'royalty' and if so, whether the same is liable to tax under section 9(1)(vi) of the Income Tax Act, 1961 read with relevant provisions of DTAA.

[Also see analysis of the Order](#)

[2009-TIOL-640-ITAT-BANG](#)

Hasan Hajee & Co Vs ACIT, Mangalore (Dated: April 30, 2009)

Income Tax - Assessee firm, a Clearing and Forwarding Agent and Transport Contractor, claims labour charges in respect of clearing and forwarding charges - AO partially disallows the claim holding that assessee could not prove that the payment is made with reference to a service rendered - CIT(A) upholds the disallowance - Held, an assessee rendering stevedore services has to pay speed money to get the work done - held, CIT(A) has not made any effort to bring on record any evidence that such payments were not for speed money - Assessee's appeal partly allowed.

[2009-TIOL-639-ITAT-DEL](#)

DCIT, New Delhi Vs M/s Vertex Customer Services (India) Pvt Ltd (Dated: September 25, 2009)

Income tax - Sec 92CA, Explanation 7 to sec 271(1)(c), rule 10B - Assessee is in the business of running a call centre - enters into international transactions with Associated Enterprises (AEs) - Since cross-border transactions are in excess of Rs five crore, a reference is made to TPO to determine ALP under Sec 92CA(3) - TPO makes adjustments on account of doubtful debts to determine ALP - Doubtful debts added back by the assessee in the computation of income - Whether AO is justified to levy penalty u/s 271(1)(c) under such circumstances.

The TPO noted that the assessee had incurred financial losses during the year. It was explained that the same was due to i) excess capacity; ii) start-up expenses, and iii) provision for doubtful debts - TPO accepts the first two factors responsible for the losses but not the third one relating to provision for doubtful debts and reports accordingly - AO makes adjustments in taxable income and initiates penalty proceedings on the ground that the assessee has not disclosed the real operating costs and comparable profit margin as required under Sec 92C resulting in suppression of income and higher claim of loss - CIT(A) treats it as difference of opinion between the assessee and the AO and holds that it is not a fit case for levy of penalty - On further appeal by the Revenue, held that:

++ the assessee had taken the services of reputed consultants KPMG for the transfer pricing review.

++ for determining the ALP the assessee had applied the TNMM as the most appropriate method. The TPO has not disturbed the method applied by the assessee.

++ the assessee has identified comparable cases that are comparable to the assessee's call centre activities. The operating profit to operate cost has been calculated by the assessee at the average of 10.12%. This aspect also not being disturbed by the TPO or Assessing Officer.

++ if the sums owed by the parent company become bad the same cannot be conclusively said to be a matter falling in ordinary course of trade. The fact that the assessee has accepted the addition and not challenged the same will not change this aspect and will remain a debatable point on which admittedly there can be two opinions. Whether the provision for doubtful debt on the facts of the case, can be said to be an extraordinary item warranting exclusion from operational cost is a debatable point.

++ as against the sum owed to the assessee, the parent company had incurred larger amount in the formation of the assessee company which was to be cross charged to the assessee. This sum was also cancelled along with the debt. If this sum was not cancelled against sums owed by the parent company, the assessee's cost would have been further loaded by a larger amount by the cross charge for formation expenses. In these circumstances, coupled with the fact that there was a full disclosure by the assessee of all the relevant facts, assessee's computation cannot be said to have been done, not in good faith and not with due diligence.

++ The assessee's conduct is not *malafide* or contumacious. Hence, no levy of penalty under section 271(1)(c) is called for.

[2009-TIOL-638-ITAT-MUM](#)

M/s Guljag Properties & Leasing Co Ltd Vs ITO, Mumbai (Dated: April 23, 2009)

Income tax - Sec 139(9), 244A - Assessee files return - Explanation (e) of Sec 139(9) - AO calls for P&L Account, Balance Sheet and Auditor's report - Assessee files but auditor's report was not certified - AO holds it defective and issues notice - Assessee takes time to cure the defect - AO passes order and grants refund - Period of interest on refund reduced as the onus for delay in curing defect was put on the assessee - held, interest u/s 244A(1)(a) cannot be denied on a technical ground like auditor's report was not signed which is actually not required u/s 139(9). For reducing the period of interest, the case should have been referred to the CIT or CCIT as per provisions of Sec 244A(2). But instead of referring the issue to senior officials, the AO decides the issue himself which is not valid - Assessee's appeal allowed

[2009-TIOL-637-ITAT-MUM](#)

Galaxy Aviation Pvt Ltd Vs JCIT, Mumbai (Dated: August 12, 2009)

Income Tax - Penalty u/s 271(1)(c) - AO completes the assessment by disallowing assets written off as an expenditure and levies penalty - CIT(A) confirms it - Held, a look at the reasons for reopening the assessment and the letter clearly demonstrates that the assessee has come forward voluntarily and corrected the mistakes that have crept into the return filed by him. The fact that the mistakes were not intentional is clear as the assessee's auditor has wrongly rounded off the gross total income. Similarly, the tax payable has been rounded off. Such mistakes are clearly an oversight and the explanation given by the assessee, are a bonafide explanation and the levy of penalty under such circumstances, is not warranted - Assessee's appeal allowed

[2009-TIOL-636-ITAT-MUM](#)

DCIT, Mumbai Vs Ms Aishwarya K Rai (Dated: September 7, 2009)

Income tax - Is Aishwarya Rai an actor? Father-in-law comes to her rescue - She is indeed an actor eligible for deduction u/s 80RR : The issue was decided in the actor's favour in the case of her illustrious father-in-law, *Amitabh Bachchan* - [2007-TIOL-03-ITAT-MUM](#) wherein the Tribunal held that if an actor used his skills as an actor or as an artist in anchoring the television show, receipt from such show is income derived by him as an 'artist' and deduction under section 80RR is allowable on such payment. A similar decision was given in the case of Sharuk Khan.

Powers of the appellate authority: An appeal is a continuation of the process of adjustment of the tax liability to accord with the taxable event in the particular taxpayer's case. There can be no analogy or parallel between a tax appeal and an appeal, say, in civil cases. A civil appeal, like a law suit in the court of first instance out of which it arises, is really and truly an adversary proceeding, that is to say, a controversy or tussle over mutual rights and obligations between contesting litigants ranged against each other as opponents. A tax appeal is quite different. Even as the assessing authority is not the taxpayer's 'opponent', in the strictly procedural sense of the term, so too the appellate authority sitting in appeal over the assessing authority's order of assessment is not strictly an arbitral court deciding a contested issue between two litigants ranged on opposite sides. In a tax appeal, the appellate authority is very much committed to the assessment process. The appellate authority can itself enter the arena of assessment, either by pursuing further investigation or causing further

investigation to be done. It can enhance the assessment, taking advantage of the opportunity afforded by the taxpayer's appeal, even though the appeal itself has been mooted only with a view to a reduction in the assessment.

What is meaning of 'foreign exchange'? As per section 2(n) of Foreign Exchange Management Act, 1999, Drafts, traveller cheques, letter of credits or bills of exchange drawn by bank, institutions or person outside India, but payable in Indian currency will also be 'foreign exchange'. The amount received by the assessee was 'foreign exchange'. Original amount was in Swiss Francs which is convertible in rupees. i.e. "Convertible foreign exchange", therefore it can be said that the assessee received amount through above banking channel is a "convertible foreign currency". Thus for getting deduction u/s 80RR, the assessee satisfied the condition that amount was received in convertible foreign exchange.

[Also see analysis of the Order](#)

[2009-TIOL-635-ITAT-BANG](#)

Shri Bernard Hereford Vs ITO, Bangalore (Dated: July 31, 2009)

Income Tax - Assessee an individual, trading and servicing in fire extinguishers and fire safety equipments - claims depreciation on purchase of treadmill - AO notes that the purchase of treadmill not connected with the assessee's business and hence disallows the claim of depreciation - CIT(A) rejects assessee's claim - Held, in the light of the fact that treadmill has been delivered at the house of the assessee, the conclusion of the authorities below that it is for the purpose of personal use is justified and no interference is called for.

On the issue of addition made by AO being the difference in the value of closing stock - Held, since technology is changing at a much faster pace and a lot of imported items are available for sale in the open market, products which are not sold quickly become obsolete. The assessee valued the closing stock at market price. The assessee's valuation cannot be faulted, since assessee has option to value closing stock at market price or cost price, there is no revenue implication, addition restricted, this ground of the assessee is partly allowed. Assessee Appeal partly allowed.

[2009-TIOL-634-ITAT-COCHIN-TM](#)

ACIT, Trivandrum Vs M/s Travancore Titanium Products Ltd (Dated: August 14, 2009)

Income Tax - Advance given by One PSU to another - No notional interest when there is no enforceable right to receive interest: The basic concept is that he must have acquired a right to receive the income. There must be a debt owed to him by somebody. There must be as is otherwise expressed *debitum in prasenti, solvendum in future*. Unless and until there is created in favour of the assessee a debt due by somebody, it cannot be said that he has acquired a right to receive the income or that income has accrued to him.

[Also see analysis of the Order](#)

[2009-TIOL-633-ITAT -BANG](#)

M/s Skylark Educational Society Vs DIT, Bangalore (Dated: April 3, 2009)

Income Tax - Section 11, 13(3) and 80G(5) - One of the members of the Executive Committee of the society leases a property to the society where the educational institution is being run on a deposit of Rs 5 lakhs - Later on, an additional amount of Rs.6.5 lakhs is advanced to the member for expansion of the school premises - As per DIT(Exemptions), assessee-trust will not be entitled for exemption u/s 11 on the ground that the amount advanced to the member is to be deemed to have been lent without interest and did not allow renewal of approval u/s 80G - Held, the sum cannot be termed as a loan because it is not repayable at the instance of the lender. As per the lease agreement, the amount given as refundable advance is not covered u/s 13(2)(a). The refundable advance has been utilized for the construction of the additional floor space and that additional floor space has been utilised by the society without paying any rent - Exemption u/s 11 is to be given if there is benefit to the person specified in section 13(3) - assessee's appeal allowed

[2009-TIOL-632-ITAT -DEL](#)

M/s Ranbaxy Laboratories Ltd Vs ACIT, New Delhi (Dated: June 12, 2009)

Income tax - Sec 37(1) - Assessee is a pharma manufacturer - offers stock options to employees under ESOP Scheme at a price lesser than the market price - claims the difference between the market price and the offered price under ESOP as deductible loss - AO disallows and CIT(A) agrees with him - held, the difference between the premium price of shares in the market and the price at which the same were offered to the employees were only notional loss. The assessee is not to discharge any liability by making any sort of payment. The assessee merely grants stock option, though at a concessional rate but thereafter was not to discharge any liability in this regard. The loss if any, is notional and not actual liability incurred. Assessee's appeal rejected

[2009-TIOL-631-ITAT -MUM](#)

ITO, Mumbai Vs M/s Western Outdoor Interactive Pvt Ltd (Dated: August 12, 2009)

Income tax - Sec 10A benefits - Assessee is into entertainment software exports - owns a unit at Fort in Mumbai and claims Sec 80HHE benefits - sets up second unit and makes investments in infrastructure development - claims deduction u/s 10A - AO allows but disallows the same for subsequent AYs on the ground that the new unit was set up after splitting the existing unit as the buyer of the products is the same, and also the payments sometimes received are composite for both the units - CIT(A) disagrees and allows the appeal - held, merely because the products are the same and the buyer of the products is the same, it cannot be held that the assessee is not entitled to benefits u/s 10A - no evidence to suggest that the new unit was set up by splitting up the existing unit nor is there any proof to indicate transfer of plant and machinery - Revenue's appeal dismissed

[2009-TIOL-630-ITAT-COCHIN](#)

Vodafone Essar Cellular Ltd Vs ACIT, Kochi (Dated: April 30, 2009)

Income tax - Sec 194H - Assessee is a cellular service provider - markets its services through distributors - pays commission to distributors for marketing post-paid SIM Cards and also deducts TDS on the payment made - however, enters into separate agreement with distributors for marketing pre-paid SIM Cards - offers SIM Cards on discounted price and gives freedom for pricing them but not beyond MRP - does not deduct TDS on the ground that it sells SIM Cards in bulk, and in case distributors fail to sell them it is their loss - even in the case of damage, the assessee does not provide replacements - claims it enjoys principal to principal relationship with distributors who are offered margins on sale of pre-paid SIM cards and no sum is credited to their accounts as commission - AO passes orders under section 201(1) and 201(1A) on the ground that it is principal to agent relationship as even after the sale of SIM cards, the assessee-company regulates the marketing behaviour of its distributors who exclusively promote the assessee's products or services - CIT(A) agrees with the AO - held,

++ the pricing freedom is not so crucial in examining the exact nature of the business relation between the assessee-company and its distributors. The pricing factor is also a matter of mutual consent between the parties;

++ the Kerala HC in the case of the assessee's predecessor company held that the transaction between the service provider and the distributors is only that of a service and not sale and purchase of any goods or merchandise;

++ Since the SIM Card is only a device to have access to the mobile phone network, there is no question of passing of any ownership or title of the goods from the assessee-company to the distributor or from the distributor to the ultimate consumer.

++ The essence of service rendered by the distributors is not the sale of any product or goods. The distributors are providing facilities and services to the general public for the availability of devices like SIM Cards to have access to the mobile phone network of the assessee-company;

++ The essence of service rendered to the pre-paid and post-paid consumers are one and the same. There is no difference. The only difference is technical. The essence of post-paid and pre-paid services rendered by the assessee-company is the same and the relationship between the assessee and the customers is also the same. Therefore, if post-paid scheme is subject to section 194H, it is quite unlikely that pre-paid system would be outside the purview of section 194H.

[Also see analysis of the Order](#)

[2009-TIOL-629-ITAT-DEL](#)

DCIT, New Delhi Vs M/s Sumi Motherson Innovative Engg Ltd (Dated: June 15, 2009)

Income Tax - Sec 2(24)(x) and sec 36(1)(va) - AO disallows and makes addition on account of employees' and employer's contribution towards PF within the grace period of 5 days allowed under the relevant statute - CIT(A) deletes addition - Held, in view of the decision of Karnataka High Court in the case of CIT Vs. Sabari Enterprises, Revenue ground dismissed.

[2009-TIOL-628-ITAT-DEL](#)

Hindustan Times Ltd Vs ACIT, New Delhi (Dated: September 4, 2009)

Income Tax - section 36(1)(iii) - On the issue of CIT(A) confirming disallowance incurred on account of guarantee commission for procuring foreign loan for purchasing new machinery holding the same to be of the nature of capital expenditure - Held, guarantee commission has been paid by the assessee on the loan taken for purchase of new machinery. In the earlier years, the Tribunal has held such expenditure, of revenue nature. Assessee's ground allowed.

On the issue of CIT(A) confirming disallowance for conducting a market research on insurance project of the appellant holding the same to be of the nature of capital expenditure - Held, the term business as defined u/s 2(13) should not be construed in a restricted manner - in the present economic environment companies prefer to have a scale of operations and various business activities under the same company so as to generate efficiency, cost control as well as to gain recognition in the business world. Hence, a certain portion of gross receipts / profit is generally earmarked for exploring possibilities of various business along with the running of various business activities at the same time. when specific activity like market research can be done by a specialized agency then there is no reason as to such expenditure should not be allowed as revenue expenditure, specially, when outsourcing is in vogue in the business world today. Assessee's ground allowed.

[2009-TIOL-627-ITAT-BANG](#)

M/s Sun Microsystems India Pvt Ltd Vs ITO (Dated: August 21, 2009)

India-Singapore DTAA - Article 12(4) - Assessee is a subsidiary of a US-based Group of Companies - enters into agreement with its Group company in Singapore for procuring logistic services - Sec 195 - whether payment made for such services liable to TDS.

[Also see analysis of the Order](#)

[2009-TIOL-626-ITAT-PUNE](#)

Piaggio Vehicle Pvt Ltd Vs DCIT, Pune (Dated: May 29, 2009)

Income tax - Sec 32 - Assessee claims depreciation on goodwill asset - AO disallows and CIT(A) confirms the order - held, the assessee has consistently claimed that the payment represents the consideration for goodwill and other rights, facilities and business infrastructural assets. Assessee should be given an opportunity. Case

remitted to the AO to follow the ratio of the Tribunal's decision in Skyline Caterers - Assessee's appeal allowed

[2009-TIOL-625-ITAT-DEL](#)

DCIT, New Delhi Vs M/s Nokia India Pvt Ltd (Dated: May 22, 2009)

Income tax - Penalty u/s 271(1)(c) - AO makes disallowance of various types of expenses and initiates penalty - CIT(A) does not agree - held, merely because some expenditures are disallowed, penalty cannot be imposed. Then, most of the disallowances are not sustainable, and therefore, no penalty is called for - Revenue's appeal dismissed

[2009-TIOL-624-ITAT-MUM](#)

ACIT Central , Mumbai Vs Smt Jaya Bachchan (Dated: August 20, 2009)

Income tax - Sec 69C - Assessee is a cine artist - files return - revised return filed and claims deduction for estimated expenditure @ 30% on professional receipts - later, claim for expenditure withdrawn for lack of evidence to substantiate the same - Reassessment u/s 147 - Additions made by treating the withdrawn expenditure as undisclosed income - CIT (A) finds the AO had no additional facts to reopen the case and it is a case of change of opinion - held, since the Revenue had prima facie no material to justify the invocation of Sec 69C, no fault can be found with the CIT(A) order - Revenue's appeal dismissed

[2009-TIOL-623-ITAT-PUNE](#)

Eagle Flask India Pvt Ltd Vs JCIT, Pune (Dated: May 29, 2009)

Income tax - Sec 28(i) - Assessee manufactures steel flasks and thermowares - receives certain sums as subsidy from UNDP under Montreal Protocol for phasing out Ozone Depleting Substances (ODS) and meeting incremental expenses of production - A part of the sum received is towards the purchase of capital goods and the rest for meeting the hike in the running costs of the manufacture on account of the clean energy in place of ODS - AO treats the entire sum as capital in nature and does not offer the same for taxation - AO treats a part of the subsidy linked to meeting 'incremental costs' as trading receipt as it is for day to day running of the business - CIT(A) agrees with the AO - held, this is not a case which is covered under section 28(ii)(va). Clause (va) was inserted in the Act vide Finance Act 2002 to tax that compensation which is paid for not doing certain business. In other words, this Clause treats a capital receipt as income but this has to be for not doing certain business. In this case, the compensation is not for not doing certain business but for meeting incremental costs of doing business and it is very much a revenue receipt or it may be deducted from the total costs of production - such subsidy is very much revenue receipt, and is liable to tax - Assessee's appeal dismissed

[Also see analysis of the Order](#)

[2009-TIOL-622-ITAT-DEL](#)

Citifinancial Consumer Finance India Ltd Vs ACIT, New Delhi (Dated: July 31, 2009)

Income Tax – Section 37(1) - AO held that one time payment of entrance fee to Delhi Golf Club gives enduring advantage to the assessee and is therefore, a capital expenditure – Held following CIT vs Samtel Color Ltd decision ([2009-TIOL-58-HC-DEL-IT](#)), the expenditure on corporate membership of a club is revenue expenditure and allowable as such.

Income Tax Act – Section 37(1) – AO noted that the assessee in its books of account treated commission payable to Direct Selling Agents (DSA) as deferred revenue expenditure over the period of loan. However, in computation of income entire expenditure has been claimed. The AO relying upon the decision of Hon'ble Supreme Court in the case of Madras Industrial Investment Corpn. Ltd, Vs. CIT ([2002-TIOL-290-SC-IT-LB](#)), held that the entire expenditure in one year cannot be allowed – Held that the assessee's liability to pay the commission partly arises at the time when the DSA sources the hirer and partly on the volume of business generated. The assessee disburses the amount only after receiving the upfront processing fee from the prospective borrowers. It is also accepted fact that upfront processing fee is taxed in the year of receipt itself and not spread over the period of hire -purchase finance. Therefore, it can be said that the payment of commission is not based on the hire-purchase charges receivable by the assessee but on the basis of hirer sourced by the DSA and in respect of such hirer the processing fee is received, is allowable in the year of payment. However, the copies of contracts with DSA do not demonstrate as to what services were rendered by the DSA for which the liability to pay the brokerage arises and how it can be worked out. The agreement shows that DSA were to source the borrower but the terms of agreement do not reveal as to on what basis the brokerage is payable and is linked to what, or how the assessee will be liable to pay such brokerage. However in absence of sufficient material matter remitted back to the file of the AO to examine the facts afresh. The AO shall consider how the brokerage paid is worked out and is linked to what nature of income receivable by the assessee. If the brokerage payable is linked to hire charges which are receivable over period of hire purchase finance, the brokerage will also be allowed accordingly. However, if it is otherwise, the same will be allowed in the year of payment itself.

[2009-TIOL-621-ITAT-DEL](#)

M/s Amway India Enterprises Pvt Ltd Vs DCIT, New Delhi (Dated: May 29, 2009)

Income tax - Sec 37(1) - Assessee incurs huge expenses for leasehold improvements - AO treats the same as capital in nature - held, it was decided earlier in the assessee's own case that such expenditures are revenue in nature except for workstations as held by the Delhi HC in Bigjo's case - case remanded for fresh examination

[2009-TIOL-620-ITAT-MUM](#)

ACIT, Mumbai Vs M/s A K Corpn (Dated: April 29, 2009)

Income Tax - Assessee, a registered firm and consultant to foreign parties, claims deduction u/s 80-O which is initially allowed but subsequently AO issues notice u/s 148 and disallows - CIT(A) allows the deduction - Held, services rendered from within India for use outside India are entitled for deduction u/s. 80-O. Information collected by the assessee and supplied to the foreign principals has been used or were useful to the foreign enterprise in their manufacturing programme or its modifications to suit the Indian parties involved. Information furnished by the assessee is not knowledge-oriented and value oriented. The assessee collects strategic information from various sources and assimilates the same, and after filtering delivers the right information at the right time and right place so that it can be commercially used by its clients - Revenue's appeal dismissed.

[2009-TIOL-619-ITAT - BANG](#)

3G Wireless Communications Pvt Ltd Vs ACIT, Bangalore (Dated: July 10, 2009)

Income Tax - Assessee, a company engaged in the business of buying, selling, assembling and servicing of wireless communication equipments, claims deduction u/s 80-IB - AO denies the contention holding that the activity of the assessee is not manufacture or production - CIT(A) agrees with the AO - Held, the expression "production" has a wider meaning than the word 'manufacture' and 'production' includes the activity of manufacturing by applying human endeavour on some existing raw material - demonstration of assessee's equipment proves that company indulges in manufacturing activity since various electrical and electronic components are integrated by an indigenously designed circuit and assembled in a box, thereby bringing out into existence a new product, the utility and function being altogether different from the inputs - Assessee's appeal allowed.

[2009-TIOL-618-ITAT - MUM](#)

JCIT, Mumbai Vs M/s Siemens Aktiengesellschaft (Dated: June 30, 2009)

Income tax - Sec 9(1)(i) - Indo-German DTAA - assessee is a German supplier of telecom equipment - makes offshore supplies - provides after-sale support services through subsidiary company in India - taxability of business profits - whether income is taxable under the domestic law or is exempted under the DTAA?

[Also see analysis of the Order](#)

[2009-TIOL-617-ITAT - MUM](#)

M/s Laxmi Development Corpn Vs ACIT, Mumbai (Dated: May 6, 2009)

Income Tax - Assessee, a partnership firm engaged in the business of land and buildings, did not file IT return - AO issued notice u/s 148 holding that income on account of land sold had escaped assessment - CIT(A) dismissed assessee's appeal—Held, mere length of period for which the land had been held by the assessee is not sufficient to rebut the material on record that the assessee had always intended to

carry on the business and the large part of the land purchased was meant for the purposes of business and not to be kept as an investment in contrast to the business—Held, profit on sale of land is assessable under the head 'profits and gains of business' - Assessee's appeal dismissed.

[2009-TIOL-616-ITAT-MAD](#)

ACIT Vs M/s Speed-A-Way Pvt Ltd (Dated: April 16, 2009)

Income Tax - Section 36(1)(vii) - AO makes addition on the ground that assessee has not proven that the 'debts' had become 'bad' hence the decision of the assessee to write off the impugned debts is not *bonafide* - CIT(A) deletes addition - Held, it is true that a *bonafide* and honest judgment of the assessee in this regard cannot be questioned by the AO - But it has to be seen that the 'debts' were trade-debts and that the judgment of the assessee in respect of all the 'debts' was *bonafide* and honest - Matter remanded for afresh adjudication - Revenue Appeal allowed.

[2009-TIOL-615-ITAT-DEL](#)

M/s Power Finance Corpn Ltd Vs DCIT, New Delhi (Dated: June 25, 2009)

Income Tax - Sec 36(1)(viii) - Assessee, a PSU, claims deductions for interest paid on deposits, income from guarantee fee, upfront fee, management fee and agency fee - AO disallows - Held, following the order of the Tribunal passed in the case of the assessee for earlier A.Y, the deduction u/s 36(1)(viii), in respect of income from interest on FDRs and income from guarantee fee is not allowable - The receipts of the upfront fee, management fee and agency fee are not the income derived from the business of long term financing and the same cannot be treated as part of the profits eligible for deduction u/s 36(1)(viii) - CIT(A) order upheld - Assessee's appeal partly allowed

[2009-TIOL-614-ITAT-DEL](#)

DCIT, New Delhi Vs M/s Ranbaxy Laboratories Ltd (Dated: July 24, 2009)

Deduction on account of shares given under Employees Stock Option Scheme (ESOP). The assessee is not to defray or pay any liability under the claim. Therefore, such notional loss cannot be held to be allowable under the scheme of the Act.

Addition of Rs. 28,76,76,167/- made u/s 43B on account of provision for pension to employees and when no pension trust was constituted nor contributed the amount to any outside agency. no separate fund was created and the pension was payable to the employees upon their resignation/retirement or to the family members in the event of death of the employee. there can be no question of disallowance u/s 43B of the Act

Donation: The mere fact that making of a donation for a charitable or public cause or in public interest results in the Government giving patronage or benefit can be no ground to deny the assessee a deduction of that amount under section 37(1) other

Act when such payment had been made for the purpose of the assessee's business.

Section 80 HHC : Excise Duty – Foreign exchange: - excise duty could not be added to the total turnover for the purpose of computation of deduction u/s 80HHC ; foreign exchange fluctuation gain pertaining to exports affected in earlier years cannot be said to be "any other receipts of a similar nature" in terms of Explanation (baa) to sec. 80HHC for calculating "profits of the business".

Addition of Rs. 1,88,06,077/- made on account of demand raised by NPAA when the demand did not crystallize as the matter was subjudice , and pertained to a period not under consideration. Disputing the payment of liability by way of an appeal does not disentitle the assessee to claim that demand as an expenditure as what is sought by the assessee who is disputing the liability is a relief from higher court. Tribunal found no infirmity in the order of CIT(A) vide which he has held that such liability being arisen and crystallized during the year should have been allowed to the assessee.

weighted deduction u/s. 35(2AB) on the cost of computer, motor-car and other assets provided to R&D employees. The expenditure has been incurred by the assessee on vehicles, computers and other assets, provided to its employees working at the approved research facilities and directly engaged in the research and development activities. There is no dispute that the expenditure in question was incurred by the assessee in respect of research & development facilities which have been duly approved by the prescribed authority u/s 35(2AB). Therefore, the assessee is clearly entitled for weighted deduction.

[Also see analysis of the Order](#)

[2009-TIOL-613-ITAT -MUM](#)

ACIT, Mumbai Vs M/s Spica Elastic Pvt Ltd (Dated: September 1, 2009)

Income tax - Sec 40A(2)(b) - Assessee is a manufacturer of elastic - incurs expenses on purchase of licensed software - AO treats the same as capital expenditure and allows depreciation - held, it is settled law that the technology is fast changing, and systems need regular upgradation or replacement, and therefore, it is revenue expenditure, fully deductible - Revenue's appeal dismissed

[2009-TIOL-612-ITAT -MUM](#)

M/s Unicom Appliances Ltd Vs CIT, Mumbai (Dated: January 16, 2009)

Income tax - Sec 80IB, 263 - Assessee claims deductions u/s 80IB - AO allows it - CIT invokes powers u/s 263 on the ground that the AO has failed to apply his mind to income heads like 'sales & services' and 'other income' - held, it is settled law that the deduction u/s 80IB is allowable on profits and gains derived from certain industrial undertakings. The receipts by way of service charges and other income cannot be held as income derived from the industrial undertaking. CIT order upheld and assessee's appeal dismissed

[2009-TIOL-611-ITAT-MUM](#)

Universal Ferro & Allied Chemicals Ltd Vs ACIT, Mumbai (Dated: August 11, 2009)

Income tax - section 40(a)(i) - Assessee makes payment to a US citizen towards retainership fee - AO insists on TDS - held, since the services were provided outside India and the non-resident had no fixed place in India, his income is not taxable in India - therefore, there is no ground for tax deduction at source and the sum cannot be disallowed under section 40(a)(i) - assessee's appeal allowed

[2009-TIOL-610-ITAT-MUM](#)

Xelo Pty Ltd Vs DDIT, Mumbai (Dated: June 22, 2009)

Income Tax – Sec 9 - Income deemed to accrue or arise in India – Assessee is a resident of Australia and enters into a contract with Metro Railways through its PE in India – Assessee does not offer to tax profit on account of off-shore supply of equipments – Held, considering that Metro Railways had itself bifurcated the value of contract amongst supply of equipments and services contention of revenue that there was no scope of bifurcation between indigenous services and offshore supply of equipments was unacceptable – Held further that since offshore supply of equipment was made were by property of goods passed on to buyer in foreign country and further payment was received by assessee in foreign country, no part of income on account of offshore supply could be said to have deemed to accrue or arise to assessee in India within meaning of section 9

Income Tax Act – Section 90 – Held that if income is not taxable as per the provisions of Act provisions of DTAA cannot be invoked to create any tax liability

Income Tax Act – Section 9 read with Rule 10 – Attribution of Profits - Assessee fails to produce books of account and thus the AO applies rule 10 and determines income at rate of 10% - CIT(A) arbitrarily reduces profit rate to 8% - Held, matter is to be remanded to AO with a direction to compute income from all products as per books of account which assessee now claims to have in its possession.

[2009-TIOL-609-ITAT-BANG](#)

DCIT, Bangalore-1 Vs M/s Bank Muscat Saog (Dated: July 24, 2009)

Income tax - Sec 5 - Assessee is a bank - claims deduction for interest accrued but not fallen due on securities - AO makes additions - CIT(A) disagrees with the AO - held, it is settled law that the broken period interest is not taxable as it has not become due and has not accrued - Revenue's appeal dismissed

[2009-TIOL-608-ITAT-MUM](#)

ACIT, Mumbai Vs M/s Blue Niles Holdings Ltd (Dated: August 26, 2009)

Income Tax - Section 36(1)(vii) r.w.s. 37(2) - Assessee engaged in share trading activity, debits a sum as provision for Non-Performing Assets and places reliance on RBI Guidelines in support of the said deduction - AO is of the view that the NPA claimed does not satisfy any of the conditions of section 36(1)(vii) r.w.s. 37(2) and makes additions - CIT(A) deletes the same - Held, once the special bench of the tribunal decides a controversy in a particular manner then that becomes binding on the other Division Benches of the tribunal. In the absence of any direct judgment of the Supreme Court or the jurisdictional High Court, it is not open to the Division Benches to deviate from the view expressed by the Special Bench. It is impermissible for the Division Benches of the tribunal to ignore the view expressed by the special bench by entertaining a contrary view. The order passed by the Special Bench of the Tribunal in the case of New India Industries Ltd. is binding on this Division Bench and according to that the provision for bad debt cannot be allowed as deduction - Revenue Appeal allowed.

[2009-TIOL-607-ITAT-MUM](#)

DCIT, Mumbai Vs Dow Chemicals International Pvt Ltd (Dated: August 21, 2009)

Income Tax - Assessee engaged in the business of manufacturing and trading in chemicals - claims deduction for bad debts - AO disallows by observing that the assessee had not written off the said amount in its books of account - CIT (A) confirms the AO's action - Held, in view of the decisions of Bombay High Court in the case of Director of Income Tax vs Oman International International Bank and in Star Chemicals issue remanded to AO for afresh adjudication.

Revenue Appeal on the issue of CIT (A) directing the AO to verify and allow the PF payment made in the grace period - Held, CIT (A) has directed the AO to allow the payments which are paid within the grace period following the decision of the Mumbai High Court in the case of Maharashtra State Seed Corporation and also the decision of the Madras High Court in the case of Ganapathy Mills Co. Ltd. In view of this, no infirmity with the order of CIT(A). Revenue's appeal dismissed.

[2009-TIOL-606-ITAT-DEL](#)

M/s Ansal Housing & Construction Ltd Vs DCIT, New Delhi (Dated: June 12, 2009)

Income Tax - deduction u/s 80IB(10) - Assessee claims deduction - AO allows the claim on production of completion certificates - CIT invokes powers under section 263 on the ground that AO has not made enquiry in respect of certain things which are necessary for deduction u/s 80IB (10) and sets aside the assessment for making it afresh - Held, the revision of assessment orders as sought to be made by the CIT, while exercising jurisdiction under section 263, would in such a case be merely a difference of opinion and hence not amenable to the revision jurisdiction. The deduction can be allowed with respect to the units which did not exceed the statutory limit of 1000 sq. ft. Deduction u/s 80-IB(10) has been rightly allowed on housing projects because the building plans of the residential units were approved after 1.10.98 only, and the construction has to be deemed to have been commenced on or after the date of approval itself. Assessee Appeal partly allowed.

[2009-TIOL-605-ITAT-MUM](#)

M/s PCI Drugs And Laboratories P Ltd Vs ITO, Mumbai (Dated: September 2, 2009)

Income tax - Sec 23(1)(a) - Assessee owns six premises - self-occupies four for business purposes and lets out two for rental income - AO denies the theory of self-occupation and makes addition for notional income from the four self-occupied premises - AO does so on the ground that the assessee's business was drastically reduced and its factory was sealed and the assessee fails to provide electricity bills if any business was carried out - CIT(A) holds that merely because the business was reduced it cannot be said that the business premises were not used for business. The fact that the assessee wanted to sell them, the premises were kept unoccupied and no notional income can be added - held, the fact that the Revenue in earlier years allowed depreciation on these premises by treating them business assets, they cannot now be treated differently and no notional income from rent can be assessed under Sec 23(1)(a) - Assessee's appeal allowed

[2009-TIOL-604-ITAT-MUM](#)

WNS Global Services Pvt Ltd Vs ITO, Mumbai (Dated: June 17, 2009)

Income tax - Sec 10A(9) - Assessee is a subsidiary of UK-based company - provides IT-enabled BPO services - During the relevant FY, WNS (Mauritius) Ltd, a wholly owned subsidiary of WN Holdings, acquires the entire share capital of the assessee from the UK-based company - assessee owns four units - two each in Mumbai and Pune - files return - revises return and declares Nil income after setting off losses of certain units against profits and gains of other units - also claims Sec 10A benefits - In revised return, assessee provides information by way of a note about the change in ownership of the assessee company - AO makes inquiry about various deductions claimed but fails to apply provisions of Sec 10A(9) - CIT invokes powers u/s 263 and denies benefits under Sec 10A - held, since the AO fails to apply his mind to the application of Sec 10A(9), this is not a case of taking another view - it is a clear case of the AO's order being erroneous as well as prejudicial to the interest of Revenue as Sec 10A(9) was very much on the statute register during the relevant AY and the same was deleted in the later years and the assessee cannot claim Sec 10A benefits prior to the amendment - however, the assessee had made an alternate claim before the CIT that if Sec 10A benefits are denied, it may be allowed benefits under Section 80HHE/80JJAA and the same may be examined a fresh on remand to the AO - Assessee's appeal partly allowed

[Also see analysis of the Order](#)

[2009-TIOL-603-ITAT-DEL](#)

France Air Pvt Ltd Vs ITO, New Delhi (Dated: July 15, 2009)

Income tax - TDS u/s 194H - Assessee is an airlines - fails to deduct TDS on supplementary commission paid to agents - Revenue raises demand and interest u/s 201(1A) - held, in view of Delhi HC decision settling the issue in favour of Revenue, assessee is liable to TDS on supplementary commission - Assessee's appeal dismissed

